



**Office for People With  
Developmental Disabilities**

## **Request For Proposal**

### **MANAGED CARE ASSESSMENT**

RFP Version 2, July 26, 2022

## Contents

<b>1. INTRODUCTION .....</b>	<b>5</b>
1.1. Purpose .....	5
1.2. Background .....	5
1.3. Minimum Qualifications .....	5
1.4. Calendar of Events .....	6
1.5. Term of Contract.....	7
1.6. Designated Contact.....	7
1.7. Questions from Offerers .....	7
1.8. Announcements and Amendments to the RFP.....	8
<b>2. SCOPE OF WORK .....</b>	<b>9</b>
2.1. Background: OPWDD Strategic Planning .....	9
2.2. Managed Care for people with I/DD.....	9
2.3. Managed Care Study.....	11
2.4. Material and Considerations .....	12
2.5. Reporting Requirements .....	13
2.6. Deliverables:.....	13
<b>3. PROPOSAL REQUIREMENTS .....</b>	<b>14</b>
3.1. Administrative Proposal Requirements .....	14
3.2. Technical Proposal Requirements .....	22
3.3. Cost Proposal.....	23
<b>4. PROPOSAL SUBMISSION REQUIREMENTS .....</b>	<b>25</b>
4.1. No Late Submissions .....	25



4.2.	Packaging of Proposal .....	25
4.3.	General Submissions Requirements for Proposals .....	28
5.	EVALUATION METHODOLOGY .....	29
5.1.	Method of Award .....	29
5.2.	ADMINISTRATIVE PROPOSAL REVIEW (PASS/FAIL) .....	29
5.3.	TECHNICAL EVALUATION (70 POINTS) .....	29
5.4.	COST EVALUATION (30 POINTS) .....	30
5.5.	Final Composite Score.....	30
5.6.	Notification of Award and Non-Award .....	30
5.7.	Form of Contractual Agreement.....	30
5.8.	Opportunity for Debriefing .....	31
5.9.	The OPWDD Bid Protest Policy - Formal Written Protests.....	31
5.10.	STATE’S RESERVED RIGHTS.....	32
6.	CONTRACT CLAUSES AND REQUIREMENTS .....	34
	APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS .....	49
	APPENDIX A SUPPLEMENT – 1: AGENCY SPECIFIC TERMS AND CONDITIONS .....	56
	APPENDIX A SUPPLEMENT – 2: MWBE REQUIREMENTS AND PROCEDURES.....	60
	APPENDIX A SUPPLEMENT – 3: SDVOB REQUIREMENTS AND PROCEDURES .....	68
	APPENDIX A SUPPLEMENT – 4: FEDERAL ASSURANCES AND CERTIFICATIONS .....	73
	APPENDIX B: OPWDD CONTRACT BOILERPLATE .....	78
	APPENDIX C: INSURANCE REQUIREMENTS .....	109
	APPENDIX D: HIPAA BUSINESS ASSOCIATE AGREEMENT .....	118
	Attachment 1: Attestation Checklist (Administrative Proposal).....	124
	Attachment 2: Cost Proposal .....	135



Attachment 3: Non-Collusive Bidding Certification (Clause 7, Appendix A of this RFP) .....	136
Attachment 4: Procurement Lobbying Law Certification of Compliance .....	136
Attachment 5: Listing of Proposed Subcontractors .....	136
Attachment 6: Encouraging Use of New York State Businesses in Contract Performance .....	136
Attachment 8: Vendor Assurance of No Conflict of Interest or Detrimental Effect .....	136
Attachment 9: Executive Order 177 Anti-Discrimination Certification .....	136
Attachment 10: Sexual Harassment Policy Certification .....	136
Attachment 11: Certification Under Executive Order N0 16.....	136
Attachment 12: Reference Forms .....	136
Attachment 13: Diversity Practices Questionnaire .....	136
Attachment 7: Consultant Disclosure Reporting Requirements .....	136
Attachment 14: OPWDD Question Submittal Form .....	136
Exhibit 1: The OPWDD HCBS Waiver .....	137
Exhibit 2: OPWDD’s 5 DDROs .....	137
Exhibit 3: New York Capitated Financial Alignment Model Demonstrations .....	137
Exhibit 4: Managed Care Transition for Individuals with I/DD .....	137
Exhibit 5: NYS Managed Care .....	137

## 1. Introduction

### 1.1. Purpose

The Office for People with Developmental Disabilities (“OPWDD”) is issuing this *Managed Care Assessment* ~~Assessing Managed Care for Individuals with Developmental Disabilities in New York State~~ Request for Proposals (RFP) for the purpose of procuring consultant services from a responsive and responsible vendor to study and evaluate how the implementation of managed care would assist OPWDD in improving services and supports for people with intellectual and developmental disabilities (I/DD) in New York State (NYS). This RFP consists of this document as well as Appendixes, Attachments, and Exhibit additions to this RFP and must be completed by the Offerer and submitted in accordance with sections 1.4 and 4 of this RFP.

Pursuant to Chapter 53 of the Laws of 2021, The New York State Office of the State Comptroller approval is not required.

### 1.2. Background

1.2.1. OPWDD is a New York State executive agency responsible for the provision, regulation, and oversight of services to New York citizens with developmental disabilities. Individuals served by OPWDD have a documented history of experiencing diagnoses which could include, but not be limited to, intellectual disabilities, cerebral palsy, epilepsy, neurological impairments, or autism spectrum disorders.

OPWDD provides services and supports directly and through a network of approximately 500 nonprofit service providing agencies, with about 80 percent of services provided by the private nonprofits and 20 percent provided by state-run services.

1.2.2. The American Rescue Plan Act

OPWDD is procuring consulting services with resources resulting from the American Rescue Plan Act (ARPA) signed into law on March 11, 2021. Section 9817 of ARPA provides a 10 percent increase in Federal Medical Assistance Percentage (FMAP) to state Medicaid programs from April 1, 2021 to March 31, 2022, to supplement existing state expenditures on home and community-based services (HCBS). As detailed in State Medicaid Director Letter #21-003, issued by the Centers for Medicare & Medicaid Services (CMS) on May 13, 2021 (the SMDL), CMS affords states the ability to invest or reinvest these funds in a variety of ways that expand and enhance investments in Medicaid-covered HCBS, address COVID-related needs, and build HCBS capacity. This opportunity enables OPWDD to make significant investments that would expand, enhance, or strengthen HCBS for Medicaid members.

### 1.3. Minimum Qualifications

The Offerer must provide evidence that the following minimum qualifications are met by the Offerer or its subcontractor:

- 1.3.1. Have at least three (3) years of experience conducting program and policy analysis of public sector services in the fields of social services, long-term care services and/or the developmental disabilities field. As described further in section 3.2.1 of this RFP, strong preference will be provided to an Offerer with program and policy analysis involving services for individuals with intellectual and/or developmental disabilities.
- 1.3.2. The Offerer must also be able to demonstrate that they prepared at least one professional report, analysis, or evaluation of publicly-funded services within a managed care delivery system as follows:
  - 1.3.2.1. this may include a single three-year engagement, or multiple engagements with a cumulative period of at least 36-months;
  - 1.3.2.2. Must include an attestation to a minimum of three (3) years of experience Attachment 1: Attestation Checklist (Administrative Proposal) as required in section 3.2.1.2.2 of this RFP;
  - 1.3.2.3. Must include an affirmation with the Attachment 1: Attestation Checklist (Administrative Proposal) that the Offerer is independent of any entity that might benefit directly from the development of specialized individual Plans for Individuals with I/DD or other managed care models that may emerge in NYS and include I/DD services within the benefit package;
  - 1.3.2.4. Must include affirmation with the Attachment 1: Attestation Checklist (Administrative Proposal) that Offerer will have the ability to become HIPAA compliant and will sign a Business Associate Agreement prior to the execution of the Contract resulting from this RFP, by entering into a data sharing or business associates' agreement(s) deemed necessary by the State as provided in Appendix D: OPWDD HIPAA BUSINESS ASSOCIATE AGREEMENT of this RFP; and
  - 1.3.2.5. Must include affirmation in the Attachment 1: Attestation Checklist (Administrative Proposal) that the Offerer has provided the Attachment 8: Vendor Assurance of No Conflict of Interest or Detrimental Effect, signed by an authorized executive or legal representative, attesting that the Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with, the State of New York.
- 1.3.3. Ownership of Work Product

Offerer understands and accepts all materials produced, created, improved, maintained, or conceived by the Contractor for the OPWDD in the fulfillment of its obligations under the contract resulting from this, including but not limited to any software, website creation and development, documentation, products, materials, advertising for television, radio, print, internet, or other media, and deliverables which result from services rendered by the Contractor to the OPWDD shall be turned over to the OPWDD within ninety (90) days of the expiration of the Contract, or within thirty (30) days of early termination of the Contract, at no additional cost to the OPWDD. OPWDD shall own all rights, title, and interest in said material.

#### **1.4. Calendar of Events**

Event	Date
RFP Release Date	Wednesday, June 29, 2022
Deadline for Submission of Questions	11:00 a.m., Wednesday, July 13, 2022
Issuance of Response to Questions	<del>Monday, July 25, 2022</del> Tuesday, July 26, 2022
<b>Proposal Due Date</b>	11:00 a.m., Friday, August 5, 2022
Anticipated Notification of Tentative Award	Friday, August 19, 2022
Anticipated Contract Start Date	Thursday, September 1, 2022

NOTE: The above dates are tentative and subject to change at OPWDD's sole discretion.

#### 1.5. Term of Contract

OPWDD will enter into one (1) contract with one (1) responsive and responsible vendor as a result of this RFP. The term of the Contract will be defined in the Contract Agreement and is anticipated to be an 18-month contract with no renewal option.

#### 1.6. Designated Contact

OPWDD identifies the following allowable contact for communications related to the submission of written proposals, written 3, and pre-bid questions.

Connie Blais  
Contract Management Unit  
NYS Office for People With Developmental Disabilities  
44 Holland Ave, 4<sup>th</sup> Floor  
Albany, NY 12229  
[fmapcontracts@opwdd.ny.gov](mailto:fmapcontracts@opwdd.ny.gov)

#### 1.7. Questions from Offerers

- 1.7.1. Questions from Offerers regarding this RFP must be received by OPWDD in accordance with the Deadline for Submission of Questions included in the Calendar of Events, Section 1.4 of this RFP.
  - 1.7.1.1. All questions must be submitted via electronic mail to [fmapcontracts@opwdd.ny.gov](mailto:fmapcontracts@opwdd.ny.gov) to the appropriate contact as stipulated in Section 1.6 of this RFP.
  - 1.7.1.2. Questions must be submitted on the **Attachment 14: OPWDD Questions Submittal Form**.
  - 1.7.1.3. **Each question must, to the degree possible, cite the specific RFP section to which it refers.**
  - 1.7.1.4. OPWDD reserves the right to not answer questions that are not directly related to this RFP.
- 1.7.2. STF §§139-j and 139-k impose certain restrictions on communication between NYS and Offerers during a procurement. Additional information is available at <http://www.ogs.ny.gov/acpl>.
- 1.7.3. Offerers are cautioned that any question or inquiry regarding the RFP must be written in generic terms and must not contain pricing information. The inclusion of specific information about an Offerer's Cost proposal in an inquiry may result in the Offerer's disqualification.

- 1.7.4. All questions, clarifications, bid deviations and/or extraneous terms concerning this RFP must be submitted in writing by the Deadline for Submission of Questions as stated in the Calendar of Events (Section 1.4 of this RFP). Any bid deviations or extraneous terms of a substantial nature must be resolved prior to the submission of a bid as outlined in Section 4.2.16 of this RFP.
- 1.7.5. Offerers must identify, during the question-and-answer period, any terms and conditions in the RFP that would prohibit an Offerer from submitting a proposal. This process may not be used to negotiate material changes to the terms and conditions set forth in the RFP; any such changes will not be accepted by OPWDD.
- 1.7.6. If the Offerer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Offerer shall immediately notify OPWDD of such error in writing to the designated contact(s) identified in Section 1.6 of this RFP. If, prior to the Proposal Due Date as specified in Section 1.4 of this RFP, an Offerer fails to notify OPWDD of a known error or an error that reasonably should have been known, the Offerer shall assume the risk of proposing. If awarded the contract, the Offerer shall not be entitled to additional compensation by reason of the error or its correction. Prior to the Proposal Due Date, any such clarifications or modifications deemed necessary by OPWDD will be posted to the OPWDD website and the New York State Contract Reporter website provided in Section 1.8 of this RFP.
- 1.8. Announcements and Amendments to the RFP**
- 1.8.1. OPWDD utilizes its procurement website and the NYS Contract Reporter for the purpose of disseminating information relating to this procurement. OPWDD will post its official answers to Offerer questions and any changes to the RFP resulting from such questions on these sites on or before the Issuance of Response to Questions date as indicated in the Calendar of Events. Offerers are encouraged to monitor these sites at [Procurement Opportunities | Office for People With Developmental Disabilities \(ny.gov\)](#) and [New York State Contract Reporter - Log In \(ny.gov\)](#).
- 1.8.2. OPWDD's responses to questions and notification of amendments to the RFP, if any, will be in the form of a formal addendum which will be annexed to and become part of this RFP and any ensuing contract.
- 1.8.3. The Offerer must indicate on the form, Attachment 1: Attestation Checklist (Administrative Proposal) of this RFP, that the Offerer has reviewed and understands each addendum.

## **2. SCOPE OF WORK**

### **2.1. Background: OPWDD Strategic Planning**

- 2.1.1. OPWDD recently launched a strategic planning process which included a review of state data, policies, and gathering of extensive stakeholder feedback. Based on this process, the agency identified the importance of creating opportunities to improve OPWDD's supports and services for people with developmental disabilities by addressing gaps in services, ensuring supports are focused on individual needs, and prioritizing a person-centered, integrated care, and a holistic approach to service delivery. Additionally, OPWDD recognizes the need to explore new approaches that reduce complexity and improve the responsiveness of the system to better serve people with disabilities and incentivize improved personal outcomes and social determinants of health.
- 2.1.2. This funding opportunity seeks a contractor to evaluate if a Medicaid managed care model would be an effective approach to achieving the agency's strategic goals of prioritizing person-centeredness, integrated care, and improving personal outcomes and social determinants of health for those that OPWDD serves.

### **2.2. Managed Care for people with I/DD**

- 2.2.1. In 2013, OPWDD began an examination of a possible transition from a Medicaid fee-for-service to a managed care payment model for OPWDD services. Chapter 56 of the Laws of 2013 authorized OPWDD and the New York State Department of Health (DOH) to establish three managed care models: Mainstream Managed Care, the Fully Integrated Duals Advantage Plan for Individuals with I/DD (FIDA-I/DD), and partially capitated plans including Long Term Support Services (LTSS). Chapter 57 of the Laws of 2018 extended this authorization, with a requirement that "the Commissioner of the Office for People With Developmental Disabilities shall assess the quality and outcomes of managed care for individuals with developmental disabilities, including their experiences and satisfaction, and report to the Temporary President of the Senate and the Speaker of the Assembly no later than December 31, 2022".
- 2.2.2. In April 2016, Partner's Health Plan (PHP) launched the FIDA-I/DD in the downstate region (New York City, Long Island, Rockland, and Westchester Counties). FIDA-I/DD is available to Medicare-Medicaid I/DD enrollees ages 21 or older. The FIDA-I/DD benefit package includes a comprehensive array of Medicaid and Medicare services including hospitalization, health care, dental, behavioral health, pharmacy and OPWDD-certified developmental disability services. Further information about the FIDA-I/DD program, including copies of the three-way contract between DOH, PHP and the Center for Medicare and Medicaid Services (CMS), can be found here: <https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/New-York>.
- 2.2.3. In August 2018, OPWDD and DOH released a draft version of the New York State Medicaid Managed Care Organization I/DD System Transformation Requirements and Standards to Serve Individuals with Intellectual and/or Developmental Disabilities in Specialized I/DD Plans – Provider Led (SIPs-PL) for stakeholder review and comment. A revised draft was issued in February 2020. See

[https://health.ny.gov/health\\_care/medicaid/program/medicaid\\_health\\_homes/idd/draft\\_mco\\_qual\\_doc.htm](https://health.ny.gov/health_care/medicaid/program/medicaid_health_homes/idd/draft_mco_qual_doc.htm). The comments received in response to the draft document were reviewed as part of OPWDD's strategic planning process and will be provided to the successful respondent to this RFP.

- 2.2.4. In addition to the enrollees in the FIDA/IDD plan, OPWDD-eligible individuals may enroll in a managed care product for non-OPWDD services. The below chart summarizes current OPWDD-eligible individuals in managed care plans and the benefits associated with each product:

IDD Eligible Individuals Enrolled in NYS Managed Care & Covered Benefits					
Managed Care Product	Enrollees who are eligible for OPWDD Services (March 2022)	Medicaid Health Care Benefits	Medicare Benefits	Medicaid Long Term Care Supports & Services	Medicaid OPWDD Long Term Care Supports & Services
Mainstream Managed Care	34,677	X		X	
FIDA-IDD	1,684	X	X	X	X
Partial Capitation Plan	797			X	
Program of All-inclusive Care for the Elderly (PACE)	55	X	X	X	
Health and Recovery Plan (HARP)	51	X		X	
Medicaid Advantage Plus (MAP)	36	X	X	X	

- 2.2.5. Additional information is available on the NYSDOH website at the following sites: ([Medicaid and Managed Care \(ny.gov\)](#) & [Dual Eligible New Yorkers \(ny.gov\)](#))

### 2.3. Managed Care Study

- 2.3.1. OPWDD seeks a consultant or consulting team to conduct an analysis of existing research, policy documentation, state plans and other material (as appropriate) to evaluate managed care implementation and outcomes for people with I/DD. This will be a two-part study including:
  - 2.3.1.1. Initial report submitted to OPWDD, which will serve as the basis for the analysis due to the NYS Legislature by December 31, 2022; and
  - 2.3.1.2. Final report, expanding on the work of the initial report and submitted to OPWDD.
- 2.3.2. These two public reports will assess quality and outcomes for individuals served by OPWDD, including their experiences and satisfaction in Managed Care environments, as well as how Managed Care may support OPWDD in achieving its strategic goals. Specifically, the evaluation shall examine the State's goal to improve care and make design recommendations for further progress in developing specialized managed care options and whether such an approach will improve OPWDD's ability to achieve its strategic goals.
- 2.3.3. OPWDD expects the consultant to assess a widely representative scope of policy and available research to inform assessment and recommendations.
- 2.3.4. OPWDD expects the consultant's research and continued efforts to be informed by, connected to, and in alignment with any other related activities that OPWDD and/or partner entities are participating in during the contract period.
- 2.3.5. **Initial Report:** In response to the extension agreement of Chapter 57 of the Laws of 2018; the Initial Report should evaluate and make recommendations regarding:
  - 2.3.5.1. New York State's progress toward the implementation of managed care for the I/DD population including the transition step to establish I/DD Health Homes / Care Coordination Organizations as well as the voluntary enrollment of individuals into the FIDA-IDD Demonstration and Medicaid Mainstream Managed Care Plans;
  - 2.3.5.2. How New York and other States incorporate primary and behavioral health and long-term support services into managed care;
  - 2.3.5.3. Enrollment of the eligible Medicaid population, including children and adults, options for individuals with Medicare and/or third-party insurance and the I/DD population already enrolled in Mainstream Managed Care options independently or as part of their family's health care plan; and
  - 2.3.5.4. Managed Care Plan qualifications, including strategies to ensure the Plan has experience in serving the I/DD population.
- 2.3.6. **Final Report:** The Final Report will expand upon the Initial Report and include additional analysis and recommendations on the following:
  - 2.3.6.1. Advancing clinical integration and cross-system accountability for people with intensive cross-system needs for health care, dental services, behavioral health and I/DD services;

- 2.3.6.2. Quality design and opportunities for value-based payment strategies to strengthen the I/DD provider system;
- 2.3.6.3. Benefit design, including recommendations for covered benefits and the potential of adding I/DD residential services to the benefit package and the integration of specialized Health Home Services (also called Care Coordination Organizations); and
- 2.3.6.4. Goals to Improve Care – the goals to improve care include effective implementation of service delivery to the I/DD population, improving the responsiveness of the system to better serve people with disabilities and incentivize improved personal outcomes and social determinants of health, and the individual’s satisfaction with the quality of care that they receive. Related Quality measures should be reviewed to evaluate individual satisfaction, as well as compliance with established health and service standards-comparing Managed Care products with Fee For Service (FFS), where the information is available.
- 2.3.7. The contractor will be expected to analyze available data, reports and stakeholder feedback to inform their findings and recommendations.

## 2.4. Material and Considerations

**This evaluation Must incorporate the following material and considerations:**

- 2.4.1. **Literature Review** – a review of current research related to care management implementation for the I/DD population. A focus should be given to literature that promotes effectiveness and quality in service delivery, along with best practices. The literature review should also identify areas for future study. Contractor should also examine any Managed Care proposals that other States may have not implemented yet.
- 2.4.2. **Other States’ Experience with I/DD Managed Care Implementation** – A focus should be given to examining which strategies other States utilized when implementing care management for the I/DD population. What actions have been taken to address I/DD residential placements such as congregate care or Intermediate Care Facility (ICF) settings? The study should also explore which strategies were the most effective in in terms of meeting state’s objectives regarding community-based service delivery.
- 2.4.3. **FIDA-I/DD Examination** – the FIDA-I/DD plan offered by PHP has specific measures from the State that supplement the Federal Medicare-Medicaid reporting requirements. This NYS Dual Eligible model is currently the only full Medicaid/Medicare/OPWDD HCBS Waiver Service product in operation nationally.
- 2.4.4. **LTSS in NYS Examination** – the goal of LTSS is to assist I/DD individuals with functional limitations. This includes assistance with daily activities over an extended period. LTSS can be provided in several settings and by either formal or informal caregivers. Medicaid is a vital part of funding LTSS services.
- 2.4.5. **Support OPWDD in Achieving Strategic Goals** – OPWDD’s strategic goals were developed in response to significant outreach to and feedback from stakeholders. A focus should be given to an assessment of how the payment environment – managed care or fee-for-service – can best

position OPWDD to achieve its strategic goals as described in its recently-released strategic plan. [[https://opwdd.ny.gov/system/files/documents/2022/05/opwdd-507-draft-final-5.6.22\\_acc.pdf](https://opwdd.ny.gov/system/files/documents/2022/05/opwdd-507-draft-final-5.6.22_acc.pdf)]

## 2.5. Reporting Requirements

The Contractor will be required to submit periodic reports by the agreed upon work schedule in a manner satisfactory and acceptable to the OPWDD, and will include at a minimum:

- 2.5.1. **Progress Report:** The contractor shall provide OPWDD with a written progress report using the forms and/or formats as provided by OPWDD, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in the Offerer's Technical Proposal. Progress reports shall be submitted in a format prescribed by OPWDD.
- 2.5.2. **Final Progress Report:** The deadline for the submission of the final report shall be set forth in the Contract resulting from this RFP. OPWDD shall complete its audit and notify the Contractor of the results no later than the date set forth in the Contract. Payment shall be adjusted by the OPWDD to reflect only those services/expenditures that were made in accordance with the contract terms and conditions. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in the Contract, summarizing the work performed during the entire Contract Term in the forms and formats required.

## 2.6. Deliverables:

The contractor should expect that all deliverables may become public at OPWDD's discretion and shared with various stakeholder groups. The Contractor will provide:

- 2.6.1. Initial Report assessing the quality and outcomes of managed care for individuals with developmental disabilities, including their experiences and satisfaction.
  - 2.6.1.1. Report outline – Due: 15 days after contract start date
  - 2.6.1.2. Report – Due: December 15th, 2022
- 2.6.2. Final Report

### **3. PROPOSAL REQUIREMENTS**

The Proposal submitted in response to this RFP must include three separate proposals: an Administrative Proposal, a Technical Proposal and a Cost Proposal, as described in Sections 3.1 through 3.3 of this RFP.

#### **3.1. Administrative Proposal Requirements**

The Proposer must complete and submit the Attachment 1: Attestation Checklist (Administrative Proposal), as a mandatory requirement of the Administrative Proposal Requirements, which must be signed by an individual who is authorized to contractually bind the successful Offerer.

##### **3.1.1. Proposal Redactions - Freedom of Information Law**

3.1.1.1. Offerers must provide a list, clearly and specifically identifying any portion of the proposal that the Offerer believes constitutes proprietary information entitled to confidential handling as an exception to the Freedom of Information Law. See Appendix B: Contract Boilerplate, section 33. Public Information and Freedom of Information Law (FOIL).

3.1.1.2. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by OPWDD. Blanket assertions of proprietary material will not be accepted and failure to specifically designate proprietary material may be deemed a waiver of any right to confidential handling of such material.

3.1.1.3. Offerer is required to submit a memory stick with redacting proprietary information and clearly labeled as such per Section 4.2.3.1. of this RFP.

##### **3.1.2. Proposal Requirements**

3.1.2.1. Offerer must complete the Attachment 1: Attestation Checklist (Administrative Proposal), which consist of required attestations, agreements, warranties, certifications and documents.

3.1.2.2. Offerer must ensure the required forms are included in their submissions as required in the Attachment 1: Attestation Checklist (Administrative Proposal) proposal document checklist, provided to assist Offerers in ensuring the required documents are included in their submission.

3.1.3. The Offerer must be willing to enter into a Contract in accordance with the terms of the RFP inclusive of all Appendixes, Attachments and if the Offerer is selected for contract award, including the Questions and Answers and any Amendments or Addendums to this RFP.

3.1.4. The Offerer must attest, warrant and agree to the requirements as listed in Attachment 1 of this RFP. Additional requirements include:

##### **3.1.4.1. Insurer Qualifications and Insurance Requirements**

3.1.4.1.1. Insurer qualifications and insurance requirements are provided in Appendix C of this RFP. The Contractor must comply with these requirements to remain responsible under the terms of the Contract resulting from this solicitation.

- 3.1.4.1.2. Offerers must agree in the Attestation Checklist (Administrative Proposal), Attachment 1, that, if awarded a contract under this solicitation, they will comply with the insurer qualifications and insurance requirements.

3.1.4.2. HIPAA Agreement

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandates the compliance and confidentiality of all information and records included and related to the policies, procedures and records of a facility or site and any future rules and regulations of HIPAA. The Offerer/Contractor must have the ability to become HIPAA compliant and sign a Business Associate Agreement prior to the execution of the Contract. This agreement is included with this RFP as Appendix D.

3.1.4.3. Non-Collusive Bidding Requirement

In accordance with STF §139-d, if the Contract is awarded based upon the submission of bids, the Offerer must warrant, under penalty of perjury, that its proposal was arrived at independently and without collusion aimed at restricting competition. Each Offerer must further warrant that, at the time the Offerer submitted its proposal, an authorized and responsible person executed and delivered to OPWDD a Non-Collusive Bidding Certification on the Offerer's behalf.

The Attachment 3: Non-Collusive Bidding Certification form must be completed and submitted with the Administrative proposal.

3.1.4.4. Communication Restrictions

This solicitation includes and imposes certain restrictions on communications between OPWDD and Offerers during the procurement process. From the date of issuance of this RFP until contracts are awarded and approved, applicants and prospective applicants are restricted from making ANY contact, as defined in State Finance Law §139-j (1) (c), relating to this procurement other than written contact (e-mail) with the OPWDD staff members named in Section 1.6 of this RFP, unless it is a contact that is included among certain exceptions set forth in State Finance Law §139-j (3) (a).

3.1.5. New York State Vendor Responsibility Questionnaire

- 3.1.5.1. The Offerer agrees to fully and accurately complete the NYS Vendor Responsibility Questionnaire (hereinafter the "Questionnaire") which is available online at: [File Your Vendor Responsibility Questionnaire | Office of the New York State Comptroller](#)

- 3.1.5.2. As part of the procurement process, Vendors, affiliates and any business entity of which the Vendor is a subsidiary and subcontractors (where the subcontractor is known at the time of the contract award, its qualifications are a material factor in the award, and its subcontract will equal or exceed \$100,000 over the life of the contract) are required to complete the Vendor Responsibility Questionnaire.

- 3.1.5.3. Offerers are encouraged to complete the online form, as it will expedite Contract approval. If you do not have an online Questionnaire that is current and certified, you must complete a hardcopy Questionnaire. The Offerer acknowledges that the State's execution of the Contract will be

contingent upon OPWDD's determination that the Offerer is responsible, and that OPWDD will be relying upon the Offerer's responses to the Questionnaire in making that determination. The Offerer agrees that if it is determined by OPWDD that the Offerer's responses to the Questionnaire were intentionally false or intentionally incomplete, on such determination, OPWDD may terminate the Contract by providing ten (10) days written notification to the Contractor. In no case shall such termination of the Contract by OPWDD be deemed a breach thereof, nor shall OPWDD be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such determination.

**3.1.6. Contractor Requirements and Procedures For Equal Employment And Business Participation Opportunities For Minority Group Members And New York State Certified Minority/Women-Owned Businesses**

3.1.6.1. By submission of a bid in response to this solicitation, the Offerer agrees with all of the terms and conditions of Appendix A, Clause 12 – Equal Employment Opportunities for Minorities and Women.

3.1.6.2. In accordance with Article 15-a of the New York State Executive Law and in conformance with the regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Offerer/Contractor agrees to be bound by provisions to promote equality of economic opportunity for minority group members and women, and the facilitation of minority and women-owned business enterprise participation.

3.1.6.3. The EEO and M/WBE requirements are set forth in Appendix A Supplement - 2 of this RFP.

3.1.6.4. The MWBE EEO forms provided in Appendix A: Supplement – 2 must be completed and submitted with the Administrative proposal.

3.1.6.5. The M/WBE goal established under this solicitation is 30 percent for MWBE participation, 17 percent for New York State-certified minority-owned business enterprise ("MBE") participation and 13 percent for New York State-certified women-owned business enterprise ("WBE") participation (collectively, "MWBE Contract Goals").

**3.1.7. New York State Service-Disabled Veteran-Owned Businesses**

3.1.7.1. Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. OPWDD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of OPWDD contracts.

3.1.7.2. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Offerers are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

3.1.7.3. The SDVOB program requirements as they pertain to this RFP are detailed in APPENDIX A SUPPLEMENT – 3: SDVOB Requirements and Procedures.

- 3.1.7.4. The Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance form, included in this RFP as APPENDIX A SUPPLEMENT – 3: SDVOB Requirements and Procedures, must be completed and submitted with the Administrative Proposal.
- 3.1.7.5. The SDVOB goal established under this RFP is 6%.
- 3.1.8. Encouraging Use Of NYS Businesses In Contract Performance
  - 3.1.8.1. Offerers are strongly encouraged and expected to consider New York State businesses in the fulfillment of the Contract resulting from this RFP. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.
  - 3.1.8.2. The Attachment 6: Encouraging Use of New York State Businesses form, must be completed and submitted with the Administrative proposal.
- 3.1.9. Conflicts Of Interest
  - 3.1.9.1. Throughout the procurement process, Offerers must identify and bring to the attention of OPWDD actual or apparent conflicts of interest as knowledge of such conflicts arise, as follows:
  - 3.1.9.2. Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, please describe how your firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.
  - 3.1.9.3. The Offerer must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics or its predecessor State entities (collectively, “JCOPE”), and if so, a brief description must be included indicating how any matter before JCOPE was resolved or whether it remains unresolved.
  - 3.1.9.4. The Vendor Assurance of No Conflict of Interest or Detrimental Effect form, included in this RFP as Attachment 8, must be completed and submitted with the Administrative proposal.
  - 3.1.9.5. Any Offerer awarded a contract under this RFP will have an on-going obligation to inform OPWDD of any actual or apparent conflicts of interest.
- 3.1.10. Sexual Harassment Policy Certification of Compliance with State Finance Law §139-L
  - 3.1.10.1. By submission of this bid, each Offerer and each person signing on behalf of any Offerer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the Offerer has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the Labor Law.

- 3.1.10.2. The Sexual Harassment Policy Certification form, included in this RFP as Attachment 10, must be completed and submitted with the Administrative proposal.
- 3.1.11. Executive Order No. 177 Certification
  - 3.1.11.1. In accordance with Executive Order No. 177, the Offerer must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.
  - 3.1.11.2. The EO 177 Anti-Discrimination Certification, included in this RFP as Attachment 9, must be completed and submitted with the Administrative proposal.
- 3.1.12. Consultant Disclosure Reporting
  - 3.1.12.1. The Contractor must comply with the requirements of STF §163(4)(g), which imposes certain reporting requirements on contractors doing business as vendors with New York State. In accordance with these reporting requirements, the Contractor agrees to complete and submit Contractor's Planned Employment Report (Attachment 7– Form A) within two (2) business days after receiving notice of a Contract award and Contractor's Annual Employment Report (Attachment 7 – Form B) by May 15th for each fiscal year (April 1 – March 31) the Contract term is in effect.
  - 3.1.12.2. While the Planned Employment Report (Form A) is a one-time projection of the planned employment under the upcoming Contract term, the Annual Employment Report (Form B) is a reporting of the actual employment history for the previous fiscal year.
  - 3.1.12.3. Instructions for completing and submitting Forms A and B are included in section 6.7.3 of this RFP, and the Forms are provided in Attachment 7 of this RFP.
- 3.1.13. Tax Law Section 5-A
  - 3.1.13.1. The Offerer awarded a Contract pursuant to this RFP must comply with the requirements of Tax Law Section 5-a, which requires persons awarded contracts valued at more than \$100,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A contractor, affiliate, subcontractor, or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person has made sales delivered within New York State of more than \$300,000 during the relevant period. The OSC or other responsible approver cannot approve the Contract unless the contractor is registered with the New York State Department of Taxation and Finance to collect sales and compensating use taxes.
  - 3.1.13.2. The Contractor Certification forms, ST-220-TD and ST-220-CA, must be filed in compliance with Tax Law Section 5-a. Any Offerer awarded under this RFP must, within seven (7) calendar days of notification of award, file ST-220-TD directly with the Department of Taxation and Finance at the address provided on the form and submit ST-220-CA to OPWDD.

- 3.1.13.3. Offerers can visit the New York State Department of Taxation and Finance website to download the forms and obtain more information at: [Certification Requirements for Businesses that Contract with New York State \(ny.gov\)](#)
- 3.1.14. Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia
  - 3.1.14.1. Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found here. No. 16: Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia | Governor Kathy Hochul (ny.gov)
  - 3.1.14.2. The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.
  - 3.1.14.3. As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.
  - 3.1.14.4. The Certification Under Executive Order No. 16, included in this contract as Attachment 11, must be completed and submitted with the executed contract.
- 3.1.15. Vendor Identification Number
  - 3.1.15.1. To do business with the State of New York, each Offerer is required to obtain a NYS Vendor Identification Number for use in the Statewide Financial System (SFS). If you do not already have a Vendor ID Number, the Substitute Form W-9 must be completed and submitted directly to OPWDD upon notification of award. The purpose of the Substitute Form W-9, which will provide the Contractor’s taxpayer identification number, business name and business contact person, is to allow the State to establish a vendor file in the State Financial System. Note: IRS Form W-9 is not acceptable for this purpose.
  - 3.1.15.2. The Substitute Form W-9 is available at [New York State Substitute Form W-9](#).
- 3.1.16. Payment Terms
  - 3.1.16.1. If awarded a contract resulting from this RFP, the selected offerer must agree to accept advance payments, which OPWDD in its sole discretion may make, and which shall be recouped in accordance with section 3.1.16.3. of this RFP.
  - 3.1.16.2. In order for OPWDD to advance the balance remaining on this contract prior to March 31, 2024 and unless otherwise notified, the Contractor must submit the final claim for payment of the balance remaining on the contract no later than February 15th, 2024.

### 3.1.16.3. Refunds:

3.1.16.3.1. In the event that the Contractor must make a refund to the State for Contract-related activities, including repayment of a portion of the advance or an audit disallowance, or for deliverables found to be incomplete or unacceptable, payment must be made payable as set forth in in this section. The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Contact at the address specified in section 18, APPENDIX A SUPPLEMENT – 1: AGENCY SPECIFIC TERMS AND CONDITIONS of this RFP.

3.1.16.3.2. If at the end or termination of the Contract, there remains any unexpended balance of the monies advanced under the Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

### 3.1.16.4. Outstanding Amounts Owed to the State:

Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under the resultant Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in section 3.1.16.3 (Refunds) herein.

### 3.1.16.5. Set-Off Rights:

The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold, for the purposes of set-off, any moneys due to the Contractor under the Contract up to any amounts due and owing to the State with regard to the Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of setoff pursuant to an audit, the finalization of such audit by the State Agency, its representatives, or OSC.

### 3.1.17. Electronic Payment (ePayment) Program

3.1.17.1. If awarded a Contract under this RFP, the Contractor must enroll in the NYS Electronic Payment (ePayment) Program through OSC. ePay transfers payments directly into your bank account sooner than you would receive a payment by check. Upon execution of the Contract, the Contractor will need to submit an Electronic Payment Authorization Form. For questions, you may contact the OSC Vendor Management Unit at [epayments@osc.ny.gov](mailto:epayments@osc.ny.gov).

3.1.17.2. The Electronic Payment Authorization form must be completed and submitted to OSC upon Contract execution. The form is available at [vendrep-government-account-authorization.pdf \(state.ny.us\)](https://vendrep-government-account-authorization.pdf(state.ny.us)).

### 3.1.18. Additional Administrative Proposal Requirements

The following pdf documents can be accessed at the links provided on page 136, and must be included with the Administrative Proposal:

Attachment 3: Non-Collusive Bidding Certification (Clause 7, Appendix A of this RFP)

Attachment 4: Procurement Lobbying Law Certification of Compliance

Attachment 5: Listing of Proposed Subcontractors

Attachment 6: Encouraging Use of New York State Businesses in Contract Performance

Attachment 7: Consultant Disclosure Reporting Requirements (upon award)

Attachment 8: Vendor Assurance of No Conflict of Interest or Detrimental Effect

Attachment 9: Executive Order 177 Anti-Discrimination Certification

Attachment 10: Sexual Harassment Policy Certification

Attachment 11: Certification Under Executive Order N0 16

### 3.2. Technical Proposal Requirements

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the Offerer to perform the services contained in this RFP. The Technical Proposal should demonstrate the qualifications of the Offerer and the staff to be assigned to provide services related to the services included in this RFP.

A Technical Proposal that is incomplete in any material respect may be eliminated from consideration. The following outlines the information requested to be provided by Offerers. The information requested should be provided in the prescribed format of this Section 3 of this RFP. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the RFP may be subject to verification for accuracy.

While additional data may be presented, the following should be included. Please provide the information in the same order in which it is requested. Your proposal should contain sufficient information to assure OPWDD of its accuracy. Failure to follow these instructions may result in disqualification.

Pricing information contained in the Cost Proposal must not be included in the Technical Proposal documents.

#### 3.2.1. Offerer Organization

##### 3.2.1.1. Briefly describe your organization's mission and services;

##### 3.2.1.2. Describe in detail your organization's relevant experience in providing program and policy analysis of public sector services in the fields of social services, long-term care services and/or developmental disabilities, and experience in implementing activities similar to the scope described in Section 2 of this RFP. Describe special techniques, skills and/or abilities the organization will employ including:

##### 3.2.1.2.1. Types of evaluation services and analyses provided, and the length of time these services have been provided

##### 3.2.1.2.2. The name, title and contact information for references for a minimum of three most recent related projects. Offerers may submit up to five references to ensure a minimum of three respond. Offerers must provide reference information on Attachment 12: Reference Form of this RFP, which is available at the link provided on page 136 of this RFP, and must be submitted with the Technical Proposal.

- References, staff and or company, will be used to verify submitted information and support the evaluation process.

##### 3.2.1.2.3. Offerers must include samples of analyses and/or associated reports;

##### 3.2.1.2.4. The qualifications of the staff that would be assigned to conduct the study, analysis and training and estimated share of time each would allocate to this project. The Offerer must include the resumes of assigned staff.

- 3.2.1.2.5. For all subcontractors that it intends to use in fulfilling the requirements of the study, the role and relevant experience of the subcontractor(s) should be clearly defined and described.
- 3.2.2. Technical Proposal Narrative
  - 3.2.2.1. Offerer must provide a summary of the proposed project.
  - 3.2.2.2. Work Plan
  - 3.2.2.3. Deliverables
    - 3.2.2.3.1. This must include goals, objectives and desired outcomes with a timeline of corresponding deliverables, tasks/activities, performance measures, milestones and timelines. The Project Summary Narrative must include the deliverables associated with the managed care study to be addressed as described in Sections 2.3 of this RFP. Offerers must include:
      - 3.2.2.3.2. A detailed timeline showing each step in the study process and the dates for each deliverable;
      - 3.2.2.3.3. A proposed outline of deliverables that your organization would produce;
    - 3.2.3. Milestones and Outcomes Measurements

Describe the quantitative milestones and outcome measures that you propose to demonstrate the accomplishment of the project deliverables. Preferred proposals will describe methods to quantify outcomes to be achieved.
  - 3.2.4. Diversity Practices
    - 3.2.4.1. Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with Non-government entities and governmental units other than the State of New York.
    - 3.2.4.2. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs. OPWDD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of applicants to this procurement is practical, feasible, and appropriate. Accordingly, applicants are required to respond to the eight (8) questions included in Attachment 13: Diversity Practices Questionnaire of this RFP, which is available at the link provided on page 136 of this RFP, must be submitted with the Technical Proposal.
- 3.3. Cost Proposal**
  - 3.3.1. Offerers must submit a completed and signed Attachment 2: Cost Proposal.
  - 3.3.2. All costs must be related to the deliverables described in the Offerer’s Proposal as required in Section 3.2 of this RFP. Offerers may provide incremental breakdowns for each deliverable described in section 2.6 and 3.2.2.3 of this RFP, with no more than six (6) quarterly reporting period associated costs. Payment schedules will be finalized upon contract award.



3.3.3. All costs must be rounded to the nearest hundredths (2 decimal places).

#### 4. PROPOSAL SUBMISSION REQUIREMENTS

##### 4.1. No Late Submissions

All proposals must be submitted and received by the proposal submission date and time specified in Section 1.4 of this RFP. Proposals received after the proposal submission deadline shall be rejected. Faxed proposals and electronic submissions will not be accepted.

##### 4.2. Packaging of Proposal

4.2.1. Offerers must submit a complete proposal as outlined in this section 4 of this RFP. A proposal that does not comply with these requirements may be deemed non-responsive.

4.2.2. Proposals must be submitted on USB Memory Sticks containing PDF files for each one of the proposal sections described in section 3 of this RFP

4.2.3. Three separately sealed envelopes containing the following elements, must be submitted and labeled as follows:

###### 4.2.3.1. Administrative Proposal / Offerer Name / MC Assessment RFP

- 2 USB Memory Sticks (Admin/Offerer/MC Assessment)
- 2 Hardcopies of Attachment 1: Attestation Checklist (Administrative Proposal) with original signature
- 1 USB Memory Stick containing proposal redactions as described in section 3.1.1. of this RFP

###### 4.2.3.2. Technical Proposal / Offerer Name/ MC Assessment RFP

- 2 USB Memory Sticks (Tech/Offerer/MC Assessment)

###### 4.2.3.3. Cost Proposal / Offerer Name/MC Assessment RFP

- 2 USB Memory Sticks (Cost/Offerer/MC Assessment)
- 3 Hardcopies with original signature

4.2.4. All three separately sealed envelopes may all be combined into one mailing package. It must be clearly indicated on the outside of the mailing package that a proposal is enclosed. The proposal response must include the Offerer's street address. Proposals with a post office box must include a street address. Complete proposals must have a label on the outside of the package that states the following:

**PROPOSAL ENCLOSED** (Bold, Large Print, All capital letters)

Title of RFP: MC ASSESSMENT

Offerer's Name and Address: \_\_\_\_\_

Proposal Submission Date: \_\_\_\_\_

4.2.5. Offerer should transmit proposals in a form such that a receipt is obtained indicating the date and time of delivery and recipient.

- 4.2.6. Proposals must be submitted by U.S. Mail, or by courier/delivery service (e.g., FedEx, UPS, etc.) in a sealed package to the attention of Connie Blais at the address provided in Section 1.6 of this RFP. Proposals may also be hand-delivered as outlined in Section 4.2.11.
- 4.2.7. The OPWDD must receive complete proposals by 11:00 a.m. Eastern Daylight Time on the Proposal Due Date as indicated in Section 1.4 of this RFP. If proposal packaging labels are not sufficient to identify the contents, the OPWDD reserves the right to open packages for the purpose of identifying the source and contents of the package.
- 4.2.8. All proposals and accompanying documentation become the property of the OPWDD and ordinarily will not be returned.
- 4.2.9. The Offerer's proposal and all provisions of the offer must remain in effect for the two-hundred and seventy (270) days, during which period bids must remain firm.
- 4.2.10. If the Offerer selection process is not finalized by the date identified under the heading Calendar of Events in Section 1.4 of this RFP, a bid shall remain firm until such later time as either a contract is awarded by the OPWDD or the Offerer delivers to the OPWDD written notice of the withdrawal of the bid.
- 4.2.11. **Building Access Procedures for Hand Deliveries**
- To access the OPWDD office building, all visitors must enter through the main entrance at the front of the building and present photo identification at the security desk and comply with all requirements and procedures applicable to visitors. Offerers who intend to hand-deliver proposals or utilize independent courier services should allow extra time to comply with these procedures. Offerers hand-delivering their proposals should ask the security personnel at the security desk to call the Contract Management Unit at (518) 473-9300. Building access procedures may change or be modified at any time. Offerers assume all risks for timely, properly submitted hand deliveries.
- 4.2.12. **Joint Proposals**
- 4.2.12.1. Two or more firms may join to submit a proposal in response to this RFP.
- 4.2.12.2. If a joint proposal is submitted, the proposal shall define the responsibilities that each firm is proposing to undertake. Of the firms submitting a joint proposal, one must be designated as the primary Offerer. Any contract award issued as a result of such a submission will be made exclusively to the primary Offerer. A joint proposal must designate a single authorized official from one of the firms participating in such joint proposal to serve as the sole point of contact between OPWDD and the firms that are responding together.
- 4.2.13. **Proposal Validity**
- Bids must remain open and valid, and effective, firm and irrevocable for at least 270 days from the Proposal Due Date, unless the time for awarding the Contract is extended by mutual consent of OPWDD and the Offerer. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 270-day period, until OPWDD makes a tentative award of the Contract or the Offerer withdraws the bid in writing.

#### 4.2.14. Accuracy of Proposals

Offerers are responsible for the accuracy of their proposals. All Offerers are directed to take extreme care in developing their proposals. Offerers are cautioned to review their proposals carefully prior to bid submittal, as requests for bid withdrawals of any type are not likely to be granted. If an Offerer submits a proposal ahead of the submission deadline, they may submit an amended proposal any time prior to the Proposal Due Date indicated in the Calendar of Events, Section 1.4.

#### 4.2.15. Offerers, Subcontractors, and Contractor Obligations

4.2.15.1. The Contractor may subcontract the services procured under this Contract. OPWDD reserves the right to reject any proposed subcontractor or supplier if it determines that the company is not qualified or responsible. All such subcontracting relationships between the Contractor and its subcontractors to perform services must be memorialized by written agreement.

4.2.15.2. The Contractor shall include in all agreements with its subcontractors, in such a manner that will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions specifying that:

4.2.15.2.1. The work performed by the subcontractor must be in accordance with the terms and conditions of this Contract;

4.2.15.2.2. Nothing contained in such subcontract shall impair the rights of OPWDD or the State;

4.2.15.2.3. Nothing contained in the subcontract shall create any contractual relationship between the subcontractor and OPWDD or the State;

4.2.15.2.4. The State and OPWDD shall have the same authority to audit the records of all subcontractors as it does those of the Contractor;

4.2.15.2.5. Subcontractor shall cooperate with any investigation, audit, litigation, or other inquiry related to the Procurement or the resulting Contract.

4.2.15.3. Offerers intending to subcontract as described in section 3.2.1.2.5 of this RFP, must submit Attachment 5: Listing of Proposed Subcontractors with the Administrative Proposal available at the link provided on page 136 of this RFP.

4.2.15.4. OPWDD reserves the right, at any time during the term of the Contract, to verify that the written subcontract(s) between Contractor and subcontractor(s) complies with all of the provisions of this Section and any subcontract provisions contained in the Contract resulting from this RFP.

4.2.15.5. If, at any time during the performance under this Contract, total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

#### 4.2.16. Extraneous Terms

4.2.16.1. Proposals must conform to the terms set forth in the solicitation. Due to the requirement for uniformity of language in contracts with all Offerers or prospective Contractors, exceptions that materially alter the Terms and Conditions set forth in this RFP will be grounds for rejection of the

proposal or disqualification of the Offerer. Offerers must submit for consideration proposed extraneous terms during the question and answer period, as outlined in Section 1.7.

- 4.2.16.2. Exceptions to this RFP may only be made to the extent that they are minor and do not materially alter the Terms and Conditions stated herein and will be subject to acceptance by OPWDD or to Offerer withdrawal prior to contract award. The State reserves the right, in its sole discretion, to determine the materiality of the Offerer's stated exception.
- 4.2.16.3. Only extraneous terms accepted by OPWDD, in writing, shall be expressly incorporated into the Contract. Acceptance and/or processing of a bid shall not constitute acceptance of extraneous terms. OPWDD will not entertain any exceptions to Appendix A, Standard Clauses for New York State Contracts.
- 4.2.16.4. Any Offerer submissions on standard, pre-printed forms, such as but not limited to product literature, order forms, license agreements, contracts, or other documents that are attached or referenced with submissions shall not be considered part of the bid or resulting Contract but shall be deemed included for informational or promotional purposes only.

#### **4.3. General Submissions Requirements for Proposals**

- 4.3.1. Offerers must submit a complete response to this RFP that satisfies the requirements set forth in ATTACHMENT 1: Attestation Checklist (Administrative Proposal). Failure to do so may render the Offerer's proposal nonresponsive.
- 4.3.2. Each Offerer is expected to provide OPWDD with information, evidence and demonstrations that will make possible a contract award that best serves the stated interests of OPWDD and the State of New York. Offerers are given wide latitude in the degree of detail they offer or the extent to which they reveal plans, designs, systems, processes, and procedures.
- 4.3.3. Offerers should prepare their proposals simply and economically, providing a straightforward and concise description of their abilities to satisfy the requirements of this RFP. Proposals containing preponderance of boilerplate text are discouraged. Emphasis in each proposal should be on completeness and clarity of content.
- 4.3.4. Failure by an Offerer to provide the appropriate information or materials in response to each stated requirement or request for information may result in lower scores during the evaluation or determination of a non-responsive proposal. Responses to complex RFP requirements that are stated in a form semantically equivalent to "Offerer agrees to comply" may be rejected for non-responsiveness at the discretion of OPWDD.
- 4.3.5. Proposals that make extensive use of color photographs or illustrations, or that include separate brochures or marketing materials and overly elaborate embellishments are discouraged.
- 4.3.6. All proposals submitted in response to this RFP must be written in the English language, with quantities expressed using Arabic numerals and United States Dollars (\$ USD), as applicable.
- 4.3.7. The State of New York will not be held liable for any cost incurred by the Offerer for work performed in the preparation and production of a bid or for any work performed prior to the formal execution of a Contract or approval by the State Comptroller, if required.

## **5. EVALUATION METHODOLOGY**

### **5.1. Method of Award**

- 5.1.1. OPWDD will make an award for the services described in this RFP to a responsive and responsible Offerer on a “Best Value” basis. Best Value means that the proposal that optimizes quality, cost, and efficiency among responsive and responsible Offerers shall be selected for award (State Finance Law, Article 11, Section 163).
- 5.1.2. The evaluation process will be conducted in a comprehensive and impartial manner. The Technical Proposal will be weighted at 70%, and the Cost Proposal will be weighted at 30%. There will be no points awarded to the Administrative Proposal, which is pass/fail as outlined in Section 5.2.
- 5.1.3. An evaluation committee (the “Committee”) will be designated and will be comprised of OPWDD staff. OPWDD reserves the right to make changes in the Committee’s membership as necessary.
- 5.1.4. Proposals determined to comply with the requirements set forth in this RFP and submission requirements outlined in Section 3 of this RFP will be evaluated based on the criteria detailed in the sections below.

### **5.2. ADMINISTRATIVE PROPOSAL REVIEW (PASS/FAIL)**

- 5.2.1. After the proposal opening, each proposal will be screened for completeness and conformance with the proposal submission requirements as outlined in Section 3 of this RFP. Offerers should utilize the ATTACHMENT 1: Attestation Checklist (Administrative Proposal) to ensure the required documents are included in their submission. Incomplete responses, the failure to complete as specified, and/or the failure to provide any of the required functionality may result in a proposal being deemed nonresponsive and the disqualification of the Offerer, and the Offerer will be notified accordingly.
- 5.2.2. Submitted proposals will be evaluated on a Pass/Fail basis to determine whether the Offerer satisfies the RFP’s Minimum Qualifications specified in Section 1.3. of this RFP. Proposals that fail to meet the minimum qualifications and the required attestations will be deemed non-responsive, will not be further evaluated, and the Offerer will be notified accordingly. Passing proposals will proceed to the Technical and Cost Proposal Evaluations. Offerers may still be disqualified if it is later determined that the Offerer did not meet all RFP minimum qualifications and should not have qualified to move on to the Technical and Cost Proposal Evaluations stage.

### **5.3. TECHNICAL EVALUATION (70 POINTS)**

- 5.3.1. The Technical Evaluators will independently review and score each Technical Proposal. The criteria against which each proposal will be evaluated are described in Section 3.2 of this RFP. Final scores will be determined averaging the Technical Evaluators’ scores to calculate the score for each responsive Offerer.
- 5.3.2. Technical Requirements for Scoring:  
~~Qualifications and Experience~~

~~Work Plan~~

~~Diversity Practices~~

Offeror Organization as specified in section 3.2.1. of the RFP

Technical Proposal Narrative as specified in section 3.2.2. of the RFP

Milestones and Outcomes Measurements as specified in section 3.2.3. of the RFP

Diversity Practices as specified in section 3.2.4. of the RFP

**5.4. COST EVALUATION (30 POINTS)**

5.4.1. Offerer's Cost Proposals will be scored concurrently by the Administrative team and separately from the Technical Proposal. The Cost Proposal Evaluation will be based on the grand total cost of meeting the deliverables as outlined in Section 3.3 of this RFP. If a Cost Proposal is found to be non-responsive, that Proposal may not receive a cost score and may be eliminated from consideration.

5.4.2. The Offerer with the lowest price will be awarded the full points allocated to the Cost Evaluation. The score for each of the remaining Offerers will be proportionate to the lowest Offerer. The formula for the evaluation of other Offerer's cost will be: (lowest cost Offerer / Offerer being evaluated cost) x maximum points.

**5.5. Final Composite Score**

5.5.1. A final composite score will be calculated by combining the Technical Proposal score and the Cost Proposal score. The proposals will be ranked based on the combined scores. The Offerer with the highest score may receive a tentative award, subject to successful contract negotiations.

5.5.2. Should more than one Offerer obtain the same total score, the tie will be broken using the Cost Proposal score. When price and other factors are found to be substantially equivalent, OPWDD will select the winning Offerer at its sole discretion.

**5.6. Notification of Award and Non-Award**

The tentative awardee will be advised of selection by OPWDD through the issuance of a formal written correspondence indicating a proposed award sent via email. All Offerers will be notified of the selection or rejection of their bid via email. Should OPWDD and a tentative awardee be unable to reach agreement as to the terms of the Contract within a reasonable time, as determined by OPWDD, OPWDD may withdraw the award and proceed to the next highest scoring Offerer.

**5.7. Form of Contractual Agreement**

5.7.1. Following notification of award, the successful Offerer will be expected to sign a contract with OPWDD. The final contract will be in the form incorporated into this RFP as Appendix B, OPWDD Standard Contract Provisions (the "Contract"), or as revised through the RFP amendment process. Appendix A, Standard Clauses for New York State Contracts, becomes part of all New York State contracts and is incorporated into the Contract.

- 5.7.2. Any exception to the Contract must be raised in an Offerer question submitted to OPWDD pursuant to the Calendar of Events and in accordance with the Question and Answer process set forth in Section 1.7. OPWDD does not intend to negotiate any changes in the provisions of the Contract following the receipt of proposals.

**5.8. Opportunity for Debriefing**

Once an award has been made, Offerers may submit a written request for a debriefing as to why their bid did not result in an award. A debriefing shall be requested by an unsuccessful Offerer within fifteen (15) calendar days of release by OPWDD of a notice in writing or electronically that the Offerer's proposal is unsuccessful. The purpose of the debriefing is to provide information to each Offerer about the scoring and evaluation of the requesting Offerer's bid. OPWDD will not provide Offerers with information relating to another Offerer's bid. This is also an opportunity for an Offerer to learn how to improve future bids.

**5.9. The OPWDD Bid Protest Policy - Formal Written Protests**

- 5.9.1. Final agency decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest as described below. Any Vendor or prospective Vendor who believes that there are errors or omissions in the procurement process, or who otherwise has been aggrieved in the drafting or issuance of a bid solicitation, proposal evaluation, bid award, or contract award phases of the procurement, may present a formal complaint to the OPWDD and request administrative relief concerning such action ("formal protest").

- 5.9.2. A formal protest must be submitted in writing to the OPWDD, at [marc.l.kleinhenz@opwdd.ny.gov](mailto:marc.l.kleinhenz@opwdd.ny.gov). A formal protest must identify the name of the RFA and the award date and include a statement of all legal and/or factual grounds for disagreement with an OPWDD specification or purchasing decision, a description of all remedies or relief requested, and copies of all applicable supporting documentation.

**5.9.3. Deadline for Submission of Formal Protests**

- 5.9.3.1. The OPWDD must receive formal protests concerning errors, omissions, or prejudice, including patently obvious errors in the bid specifications or documents at least ten (10) calendar days before the date set in the solicitation for receipt of bids.
- 5.9.3.2. The OPWDD must receive formal protests concerning a pending contract award within seven (7) calendar days after the protesting party ("protestor") knows or should have known of the facts that form the basis of the protest.

**5.9.4. Review and Final Determination of Protests**

- 5.9.4.1. Protests will be resolved through written correspondence. However, the protestor may request a meeting to discuss a formal protest, or the OPWDD may initiate a meeting on its own motion, at which time the participants may present their concerns. Either the protestor or the OPWDD may elect to decline such a meeting.

- 5.9.4.2. Where further formal resolution is required, the Commissioner or Associate Commissioner shall designate an OPWDD employee (“designee”) to determine and undertake the initial resolution or settlement of any protest.
- 5.9.4.3. The designee will conduct a review of the records involved in the protest and provide a memorandum to the Commissioner or Associate Commissioner summarizing the facts as determined by the designee, an analysis of the substance of the protest, and a preliminary recommendation. The Commissioner or Associate Commissioner shall: (i) evaluate the procurement team’s findings and recommendations, (ii) review the materials presented by the protesting party and/or any materials required of or submitted by other Vendors, (iii) if necessary, consult with agency Counsel, and (iv) prepare a response to the protest.
- 5.9.4.4. A copy of the protest decision stating the reason(s) upon which it is based shall be sent to the protester or its agent within 45 calendar days of receipt of the protest, except that upon notice to the protester, such period may be extended. The protest decision is final and will be recorded and included in the procurement record.

#### **5.10. STATE’S RESERVED RIGHTS**

OPWDD reserves the right to:

- 5.10.1. Reject any or all proposals received in response to the RFP;
- 5.10.2. Withdraw the RFP at any time, at OPWDD’s sole discretion;
- 5.10.3. Make an award under the RFP, in whole or in part;
- 5.10.4. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
- 5.10.5. Seek clarifications and revisions of proposals;
- 5.10.6. Use proposal information obtained through site visits, management interviews, and the State’s investigation of a bidder’s qualifications, experience, ability, or financial standing, and any material or information submitted by the Bidder in response to OPWDD’s request for clarifying information in the course of evaluation and/or selection under the RFP;
- 5.10.7. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- 5.10.8. NOTE: Any such modification issued on or before the due date for proposals shall go to all entities that have requested a copy of this RFP or sent to the bidders’ list may be posted to the OPWDD website and the New York State Contract Reporter website provided in Section 1.8 of this RFP; after that date (or an amended date, as the case may be), notification will be only to Bidders who have submitted proposals. OPWDD’s right to issue modifications of this RFP permits any addition or deletion of requirements as OPWDD may deem appropriate.
- 5.10.9. Prior to the bid opening, direct Bidders to submit proposal modifications addressing subsequent RFP amendments;
- 5.10.10. Change any of the scheduled dates;

- 5.10.11. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
- 5.10.12. Waive any requirements that are not material;
- 5.10.13. Negotiate with the successful Bidder within the scope of the RFP in the best interests of the State;
- 5.10.14. Conduct contract negotiations with the next responsible Bidder, should the agency be unsuccessful in negotiating with the selected Bidder;
- 5.10.15. Utilize any and all ideas submitted in the proposals received;
- 5.10.16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors to ensure a full and complete understanding of an Offerer's proposal and/or to determine an Offerer's compliance with the requirements of the solicitation;
- 5.10.17. Waive minor irregularities and/or omissions in bids, if in the best interest of the State
- 5.10.18. In its sole discretion, reject illegible, incomplete, or vague bids
- 5.10.19. Re-solicit offers from the vendor community by re-publishing and re-advertising this RFP at any time; and
- 5.10.20. OPWDD shall have unlimited rights to disclose or duplicate, for any purpose whatsoever, all information or other work product developed, derived, documented or furnished by the Bidder under any Agreement resulting from this RFP.

## **6. CONTRACT CLAUSES AND REQUIREMENTS**

The terms bidder, respondent, offerer, and proposer are used interchangeably throughout this section.

### **6.1 Order of Precedence**

In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) the order of precedence shall be:

- 1) Appendix A Standard Clauses for New York State Contracts
- 2) Appendix A – Supplements 1 - 4
- 3) any Amendments and Addendum to the Contract
- 4) the Contract, Appendices B–D, any Attachments and Exhibits
- 5) the Request for Proposals (RFP)
- 6) the Contractor’s Proposal.

All prior agreements, representations, statements, negotiations, and undertakings are superseded.

### **6.2 Procurement Lobbying Requirement**

On August 23, 2005, the Legislative Law and the OPWDD Finance Law (SFL) were amended to include provisions for the regulation of attempts to influence State and other governmental entity procurement contracts. Sections 139-j and 139-k of the SFL impose procurement record requirements relating to lobbying on procurement contracts.

#### **6.2.1 Contracts subject to Procurement Lobbying Act Requirements:**

All procurement contracts with estimated annualized expenditures in excess of \$15,000 resulting from procurement transactions initiated on or after January 1, 2006 are subject to the procurement lobbying requirements and additional procurement record requirements.

The SFL defines a procurement contract as any contract or other agreement for an article of procurement<sup>1</sup> involving an estimated annualized expenditure in excess of fifteen thousand dollars.

Subject to certain exceptions, an assignment, amendment, renewal or extension of a procurement contract or any material change in a procurement contract resulting in a financial benefit to the Offerer is covered by the provisions of the Act.

Backdrop contracts, and any contracts resulting from mini-bids pursuant to the backdrop contracts, are also subject to this law.

---

<sup>1</sup> SFL §139-j(1)(b) defines “article of procurement” as “a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest or lease of real property or an acquisition or granting of other interest in real property, that is the subject of a governmental procurement.”

6.2.2 Bidder's Compliance with Communications During Restricted Period form, provided in ATTACHMENT 4: Procurement Lobbying Law Certification of Compliance of this RFP, must be completed and signed by the Offerer, and included with the Proposal, providing the representations outlined in sections 6.2.2.1 through 6.2.2.6 below:

6.2.2.1 Vendor Responsibility Determination

The procurement record for every contract must include a determination that the Offerer is responsible in accordance with vendor responsibility requirements set forth in section 6.14 of this RFP. In addition to the general responsibility determination, for all contracts subject to the State Comptroller's approval the procuring entity must make a separate responsibility determination as to whether the Offerer has: (i) knowingly and willfully violated the prohibitions against impermissible contacts or certain ethics provisions, or failed to timely disclose accurate and complete information or otherwise failed to cooperate with the procuring entity, or (ii) failed to disclose prior determinations of non-responsibility by any governmental entity for any of the above reasons within the previous four (4) years.

6.2.2.2 Offerer Certification; Complete Disclosure

Every procurement record must include a disclosure by Offerers with regard to non-responsibility determinations within the past four (4) years based on: (i) impermissible contacts or other violations of SFL §139-j; or (ii) the intentional provision of false or incomplete information to a governmental entity. (Note: To satisfy the requirement regarding Offerer's disclosure, the governmental entity must specifically request information regarding prior findings of non-responsibility for violations of SFL §139-j. A general request for prior findings of non-responsibility is not sufficient.) In addition, any procurement contract award shall contain a certification by the Offerer that the information provided to the procuring entity was complete, true and accurate.

6.2.2.3 Contract Clause; Termination Provision

OPWDD is authorized to terminate the contract if the certification (see preceding paragraph) is found to be intentionally false or intentionally incomplete, as contained in Appendix A – Standard Clauses for All New York State Contracts.

- 6.2.2.4 Agency Policy and Prohibitions Regarding Permissible Contacts SFL §139-j restricts contacts<sup>2</sup> by Offerers<sup>3</sup> with any governmental entity<sup>4</sup> regarding procurement contracts. Subject to certain exceptions set forth in SFL §139-j(3), contacts between Offerers and governmental entity personnel, other than the governmental entity's designated contact person(s), are prohibited during the restricted period<sup>5</sup> of the governmental procurement<sup>6</sup>.

The statute requires that "[e]very governmental entity shall incorporate a summary of the entity's policy and prohibitions regarding permissible contacts during a governmental procurement" and a copy of the governmental entity's procedures be included in the solicitation or bid documents for all procurement contracts. The statute further requires that if a member, officer, or employee of a governmental entity becomes aware that an Offerer has violated the permissible contacts provisions of the law, such person shall immediately notify the Ethics Officer, Inspector General, or other official of the procuring governmental entity responsible for investigation of such violations.

- 6.2.2.5 Affirmation of Compliance

All Offerers must provide a written affirmation that the Offerer understands and agrees to comply with the governmental entity's procedures relating to permissible contacts during the procurement. See section 1.6 of this RFP for OPWDD designated contact.

- 6.2.2.6 Record of Contacts

---

<sup>2</sup> SFL §139-j(1)(c) defines "contacts" as "any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental entity's conduct or decision regarding the governmental procurement."

<sup>3</sup> SFL §139-j(1)(h) defines "Offerer" as "shall mean the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts a governmental entity about a governmental procurement during the restricted period of such governmental procurement whether or not the caller has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicates with the procuring agency regarding a governmental procurement in the exercise of its oversight duties shall not be considered an offerer."

<sup>4</sup> SFL §139-j(1)(a) defines "governmental entity" as "(1) any department, board, bureau, commission, division, office, council, committee or officer of the OPWDD, whether permanent or temporary; (2) each house of the OPWDD legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the OPWDD; (6) a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the legislative law; or (7) a subsidiary or affiliate of such a public authority."

<sup>5</sup> SFL §139-j(1)(f) defines "restricted period" as "the period of time commencing with the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with article four-C of the economic development law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Proposers intending to result in a procurement contract with a governmental entity and ending with the final contract award and approval by the governmental entity and, where applicable, the State comptroller."

<sup>6</sup> SFL §139-j(1)(e) defines "governmental procurement" as "(i) the public announcement, public notice, or public communication to any potential vendor of a determination of a need for a procurement, which shall include, but not be limited to, the public notification of the specifications, bid documents, request for proposals, or evaluation criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the Proposer."

For each procurement contract, SFL §139-k requires that all contacts between an Offerer and a governmental entity during the restricted period be recorded and made a part of the procurement record.

### **6.3 Contractor Insurance Requirements**

- 6.3.1 Prior to the start of work the Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the Term of the Contract resulting from this procurement, policies of insurance as set forth in Appendix , written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York (“admitted” carriers) with an A.M. Best Company rating of “A-” or better or as acceptable to OPWDD.
- 6.3.2 Insurer qualifications and insurance requirements are provided in Appendix C of this RFP. The Contractor must comply with these requirements to remain responsible under the terms of the Contract resulting from this solicitation.
  - 6.3.2.1 If the Contractor is supplying a cloud based
  - 6.3.2.2 If the contractor is supplying a data base additional insurance will apply.
- 6.3.3 Bidders must agree in the Administrative Proposal ATTACHMENT 1: Attestation Checklist, that if awarded a contract under this solicitation, they will comply with the insurer qualifications and insurance requirements.
- 6.3.4 The OPWDD may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the OPWDD to accept insurance placed with a non-authorized carrier under any circumstances.
- 6.3.5 The Contractor shall deliver to the OPWDD evidence of such policies in a form acceptable to the OPWDD. These policies must be written in accordance with the requirements of the Appendix C of this RFP, as applicable.

### **6.4 Tax Law Section 5-A Clause**

Purchases made by the State of New York are not subject to state or local sales taxes or federal excise taxes. The official State of New York Voucher for materials, equipment, supplies and services is sufficient evidence to exempt the transaction from sales tax under section 1116 (a)(1) of the Tax Law.

- 6.4.1 Section 5-a of the Tax Law, as amended and effective April 26, 2006 requires certain contractors awarded certain contracts valued at more than \$100,000 to certify to the NYS Department of Taxation and Finance (hereinafter referred to as Tax and Finance) that they are registered to collect New York State and local sales and compensating use taxes if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, for the four (4) completed sales tax quarters in which the certification is made. In addition, contractors must certify to Tax and Finance that each affiliate and subcontractor exceeding such sales threshold during the period previously indicated, is registered to collect New York State and local and compensating tax.
- 6.4.2 This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and

compensating use tax and contractors must certify to Tax and Finance that each affiliate and subcontractor exceeding such sales threshold is registered with Tax and Finance to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agencies, from approving a contract awarded to a Bidder meeting the registration requirements but who is not so registered in accordance with the law.

6.4.3 The Bidder that is awarded the contract as a result of this RFP will be required to complete and submit to Tax and Finance the Contractor Certification Form, ST-220-TD (Part IV-2.). The selected Vendor must also submit the Contractor Certification to Covered Agency Form, ST-220-CA (Part IV-2.) to OPWDD certifying that they filed Form ST-220-TD and that the information contained on Form ST-220-TD was correct and complete as of the date it was filed. These forms as fillable PDF documents can be found at: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf).

6.4.4 Vendors may call Tax and Finance at 1-800-698-2931 for contractor sales tax information. For additional information and frequently asked questions, please refer to Tax's web site: <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

6.4.5 Bidders may call Tax and Finance at 1-800-972-1233 for questions relating to Tax Law§5-a and relating to a company's registration status with Tax and Finance. For additional information and frequently asked questions, please refer to Tax's web site: <http://www.tax.ny.gov/>  
<http://www.esd.ny.gov>

## 6.5 Freedom of Information Law/Trade Secrets

6.5.1 New York State's Freedom of Information Law (FOIL) (Public Officers Law, Article 6, Sections 84-90), available at: <http://www.dos.state.ny.us/coog/index.html>, promotes the public's right to know the process of governmental decision-making and grants maximum public access to governmental records. The proposal of the successful Bidder and the proposals of unsuccessful Bidders may be subject to disclosure under FOIL.

However, pursuant to Section 87(2)(d) of FOIL, a State agency may deny access to those portions of proposals or portions of a successful Bidder's contract which are "trade secrets" or submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise.

Please note that all information that a Firm may claim as proprietary, copyrighted or rights-reserved is not necessarily protected from disclosure under FOIL.

6.5.2 If there is information in a Firm's proposal that a Firm's claims meets the definition set forth in Section 87(2)(d), the Firm must provide a statement outlining any specific concerns.

6.5.3 Failure to identify the information which a Firm believes should be protected by Section 87(2) (d) may result in such information being disclosed if a request is received.

6.5.4 It is a Firm's responsibility to consult an attorney with any questions the Firm may have about New York State's Freedom of Information Law. All work products described herein may also be subject to FOIL disclosure.

6.5.5 The State will not honor any attempt by a Bidder either to designate its entire bid proposal as proprietary and/or to claim copyright protection for its entire proposal.

- 6.5.6 The Contractor must provide to the Division/State all information, records, and other written material it produces, possesses, or relies upon if such material is the object of a legitimate request to the Division/State pursuant to the Freedom of Information Law.
- 6.6 Force Majeure**  
Neither Party will be liable for losses, defaults, or damages under the Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of the Agreement, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, fire or any other cause beyond the reasonable control of the Party that was so delayed or so unable to perform, provided that such Party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such Party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.
- 6.7 Consultant Disclosure Legislation**
- 6.7.1 Chapter 10 of the Laws of 2006 amends State Finance Law § 8 and § 163 by requiring:
- 6.7.1.1 that the Office of the State Comptroller (OSC) include in the Consulting Services Report it compiles annually on contracts issued by state agencies for consulting services during the previous fiscal year, certain additional information on employees providing services under such contracts;
- 6.7.1.2 that contractors annually report certain employment information to the contracting agency, the Department of Civil Service (DCS) and OSC; and,
- 6.7.1.3 that OSC include such employment information in the Procurement Stewardship Act Report it compiles annually.<sup>2</sup>
- 6.7.1.4 This legislation took effect on June 19, 2006.
- 6.7.2 Process and Document Preparation:
- 6.7.2.1 **STATE CONTRACTORS EMPLOYMENT INFORMATION**  
State contractors are required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This includes information on any persons working under any subcontracts with the state contractor.
- 6.7.2.2 **CONTRACTS FOR CONSULTING SERVICE**  
The definition of contracts for consulting services includes any contract entered into by a state agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.
- 6.7.2.3 **REPORT REQUIREMENTS**
- 6.7.2.3.1 State Finance Law § 8 (sub d 17) requires that OSC report to the Legislature on contracts for consulting services that were issued by state agencies during the previous fiscal year. OSC is required to include in the Consulting Services Report the employment information described above.

- 6.7.2.3.2 To enable compliance with the law, state agencies must include the New York State Consultant Services Contractor's Planned Employment form (AC 3271-S) in the procurement record submitted to OSC for new consultant contracts. The completed form must include information for all employees providing service under the contract, whether employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information prospectively from the start date of the contract through the end of the contract term.
- 6.7.2.3.3 In order to provide notice to potential contractors that the contractor selected may be required to complete the form, state agencies may incorporate the Form A into new solicitations for consulting services.
- 6.7.2.3.4 It is important to note that regardless of a contract's payment methodology (for example, deliverable based payment or lump sum payments), an agency must structure the procurement/contract to be able to ascertain and report the required data.
- 6.7.2.3.5 Submission of a completed Form A is required for OSC approval of new contracts for consulting services, except in extraordinary circumstances as determined at the sole discretion of OSC.
- 6.7.2.4 ANNUAL REPORT REQUIREMENTS
- 6.7.2.4.1 State agencies must require state contractors to report annually on the employment information described above, including work performed by subcontractors. The annual employment reports are to be submitted by the contractor to the contracting agency, to OSC and to DCS. OSC must include the employment information in the Procurement Stewardship Act Report. State Finance Law § 163 (sub d 14) requires that OSC annually report to the State Procurement Council, the Governor and the Legislature on active procurement contracts above \$15,000.3
- 6.7.2.4.2 State Consultant Services Contractor's Annual Employment Report (AC 3272-S) is to be used to report the information. Please note that, in contrast to the information to be included on Form A, which is a one-time report of planned employment data for the entire term of a consulting contract on a projected basis, Form B is required to be submitted each year the contract is in effect and is intended to capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st - March 31st).
- 6.7.2.4.3 To enable compliance with the law, state agencies must incorporate the annual reporting requirement and the Form B template into new solicitations for consulting services to provide notice to potential contractors that the contractor selected will be required to submit the form annually. Furthermore, incorporation of the requirement for Form B to be submitted annually by the contractor is a requirement for OSC approval of new contracts for consulting services, including those contracts resulting from mini-bids, except in extraordinary circumstances as determined in the sole discretion of OSC. Since the annual reporting requirement is contained in Appendix A - Standard Clauses for All New York State Contracts as of November 2010, compliance with this requirement may be satisfied by incorporating the latest version of Appendix A into the contract.
- 6.7.2.4.4 The State Consultant Services Contractor's Annual Employment Reports will be due no later than May 15th of each year.
- 6.7.3 COMPLETING THE FORMS
- Form A and Form B must be completed for contracts for consulting services in accordance with the following:

- 6.7.3.1 Scope of Contract (Form B only): a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- 6.7.3.2 Employment Category: the specific occupation(s), as listed in the O\*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O\*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at [online.onetcenter.org](http://online.onetcenter.org) to find a list of occupations.)
- 6.7.3.3 Number of Employees: the total number of employees in the employment category employed to provide services under the contract during the report period, including part time employees and employees of subcontractors.
- 6.7.3.4 Number of hours (to be) worked: for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the report period by the employees in the employment category.
- 6.7.3.5 Amount Payable under the Contract: the total amount paid or payable by the State to the state contractor under the contract, for work by the employees in the employment category, and for services provided during the report period.

#### **6.8 Multi-Agency and Local Human Services District/County Use**

Any contract entered into pursuant to an award resulting from this RFP shall contain a provision that grants the option to extend the terms and conditions of such contract to other agencies as well as to the local social service districts in New York State providing human services.

#### **6.9 Contacts with Employees**

Prospective contractors may not approach OPWDD personnel with offers of employment during the procurement period. Any firm who is aware of an OPWDD employee who is considering employment with the firm must advise Connie Blais via e-mail forthwith (see section 1.6 for contact information).

#### **6.10 Public Officers Law**

All Vendors and their employees must be aware of, and comply with, the requirements of the New York State Public Officers Law, and all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State. In signing the proposal, each Vendor guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales, contracts, services, offers and relationships involving the State and/or State employees. Failure to comply with those provisions may result in disqualification from the bidding process and in civil or criminal proceedings as authorized by law.

#### **6.11 Restrictions on Communications**

Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer during the procurement process. An Offerer is restricted from making contacts from the earliest notice of intent to release a Request for Proposal through final award and approval of the Procurement Contract by the Governmental Entity and, if applicable, Office of the State Comptroller

("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified in this section, 1.6 of this RFP. Governmental Entity employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offerer is debarred from obtaining governmental Procurement Contracts.

## **6.12 Procedure for Handling of Protests/Appeals of Bid Specifications and Proposed Awards**

### **6.12.1 Formal Written Protests**

Final agency decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest as described below.

Any Vendor or prospective Vendor who believes that there are errors or omissions in the procurement process or who otherwise has been aggrieved in the drafting or issuance of a bid solicitation, proposal evaluation, bid award, or contract award phases of the procurement, may present a formal complaint to the OPWDD and request administrative relief concerning such action ("formal protest").

A formal protest must be submitted in writing to the OPWDD, by ground mail, except where alternate arrangements have been made, to Marc Kleinhenz, Director of Contracts and Grants, 44 Holland Avenue, 5<sup>th</sup> Floor, Albany, NY 12229.

A formal protest must include a statement of all legal and/or factual grounds for disagreement with an OPWDD specification or purchasing decision; a description of all remedies or relief requested; and copies of all applicable supporting documentation.

### **6.12.2 Deadline for Submission of Formal Protests**

OPWDD must receive formal protests concerning errors, omissions or prejudice including patently obvious errors in the bid specifications or documents at least ten (10) calendar days before the date set in the solicitation for receipt of bids.

OPWDD must receive formal protests concerning a pending contract award within seven (7) calendar days after the protesting party ("protester") knows or should have known of the facts which form the basis of the protest.

### **6.12.3 Review and Final Determination of Protests**

Protests will be resolved through written correspondence. However, the protester may request a meeting to discuss a formal protest or the OPWDD may initiate a meeting on its own motion, at which time the participants may present their concerns. Either the protester or the OPWDD may elect to decline such a meeting.

Where further formal resolution is required, the Associate Commissioner shall designate an OPWDD employee ("designee") to determine and undertake the initial resolution or settlement of any protest.

The designee will conduct a review of the records involved in the protest, and provide a memorandum to the Associate Commissioner summarizing the facts as determined by the designee, an analysis of the substance of the protest, and a preliminary recommendation. The Associate Commissioner shall: (a) evaluate the procurement team's findings and recommendations, (b) review the materials presented by the protesting party and/or any materials required of or submitted by other Vendors, (c) if necessary, consult with agency Counsel, and (d) prepare a response to the protest.

A copy of the protest decision, stating the reason(s) upon which it is based and informing the protester of the right to appeal an unfavorable decision to the Office of the State Comptroller (OSC) shall be sent to the protester or its agent within forty-five (45) calendar days of receipt of the protest, except that upon notice to the protester such period may be extended. The protest decision will be recorded and included in the procurement record, or otherwise forwarded to OSC upon issuance.

#### 6.12.4 **Appeals**

Upon receipt of OPWDD's determination of a protest, a protester has ten (10) business days within which to file an appeal of the determination with the OSC Bureau of Contracts. The appeal must be filed with Charlotte Davis at New York State Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany, NY 12236. The protester's appeal must contain an affirmation in writing that a copy of the appeal has been served on OPWDD and any other party that participated in the protest. In its appeal, the interested party shall set forth the basis on which it challenges the contracting agency's determination. The OSC Bureau of Contracts will conduct its determination of the appeal in accordance with its established policy.

#### 6.12.5 **Reservation of Rights and Responsibilities of the OPWDD**

The OPWDD reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State and OPWDD. If the OPWDD determines that there are compelling circumstances, including the need to proceed immediately with the contract award in the best interest of the State, then these protest procedures may be suspended and such decision shall be documented in the procurement record. The OPWDD will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action including solicitation of bids or withdraw the recommendation of contract award prior to issuance of a formal protest decision.

#### 6.12.6 **Procurement Activity Prior to Final Protest Activity**

Receipt of a formal bid protest shall not stay action on procurement unless otherwise determined by the OPWDD. If a formal protest or appeal is received by the OPWDD on a recommended award prior to the underlying contract being forwarded to the Office of the State Comptroller (OSC), notice of receipt of the protest and appeal must be included in the procurement record forwarded to the OSC. If a final protest decision or final decision on appeal has been reached prior to transmittal to the OSC, a copy of the final decision must be included in the procurement record and forwarded with the recommendation for award.

If a final protest decision is made after the transmittal of a bid package to the OSC, but prior to the OSC approval under SFL § 112, a copy of the final OPWDD decision shall be forwarded to the

OSC when issued, along with a letter either: a) confirming the original OPWDD recommendation for award and supporting the request for final § 112 approval, b) modifying the proposed award recommendation in part and supporting a request for final § 112 approval as modified; or c) withdrawing the original award recommendation.

#### **6.12.7 Record Retention of Bid Protests**

All records related to formal Vendor protests and appeals shall be retained for at least one (1) year following resolution of the protest. All other records concerning the procurement shall be retained according to the statutory requirements for records retention.

### **6.13 Information Security Breach and Notification**

6.13.1 The New York State "Information Security Breach and Notification Act" also known as the "Internet Security and Privacy Act" took effect December 9, 2005. The Legislature and Governor have enacted the Law in response to past and continuing identity theft and security breaches affecting thousands of people. The Law requires any person or business that conducts business in New York State and that owns or licenses computerized data that includes private information (including but not necessarily limited to social security numbers, credit and debit card numbers, driver's license numbers, etc.) must disclose any breach of that private information to all individuals affected or potentially affected in an expeditious manner. Contractor shall comply with the provisions of the New York State Information Breach and Notification Act. Contractor shall be liable for the costs associated with such breach if caused by the Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors. You may view a copy of the Law at <http://public.leginfo.state.ny.us/MENUGETF.cgi?COMMONQUERY=LAWS> by searching for "INTERNET SECURITY AND PRIVACY." The law is found at Article 2 of the State Technology Law and at Article 39-F of the General Business Law.

#### **6.13.2 Security Breach Notification**

If the successful Bidder breaches the confidentiality of a person's HIPAA or State protected information, the successful Bidder must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. The successful Bidder and the State will cooperate to mitigate the effects of any breach, intrusion, or unauthorized use or disclosure. The successful Bidder must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within two hours after becoming aware of the use or possible disclosure.

#### **6.13.3 Stop Hacks and Improve Electronic Data Security Act ("SHIELD Act")**

The winning bidder is required to comply with New York's SHIELD Act, which amended the Information Security Breach and Notification Act. The SHIELD Act significantly strengthened New York's data security laws by expanding the types of private information that companies must provide consumer notice in the event of a breach, and requiring that companies develop, implement, and maintain reasonable safeguards to protect the security, confidentiality and integrity of the private information.

### **6.14 Vendor Responsibility**

Section 163 of the State Finance Law requires that contracts be awarded on the basis of lowest price or best value to a responsive and responsible Vendor. The State and courts have

determined that responsibility includes integrity, previous performance, legal authority to do business in New York State, and financial and organizational ability to perform the contract.

As part of the procurement process, Vendors, affiliates and any business entity of which the Vendor is a subsidiary and subcontractors (where the subcontractor is known at the time of the contract award, its qualifications are a material factor in the award, and its subcontract will equal or exceed \$100,000 over the life of the contract) are required to complete the Vendor Responsibility Questionnaire in accordance with section 3.1.5 of this RFP.

OPWDD shall conduct reviews of each vendor for responsibility and responsiveness. OPWDD may, at OPWDD's sole discretion, request additional information, including meeting with the Vendor.

If the Vendor is determined by OPWDD to be not responsible, OPWDD shall inform the Vendor of such ruling. The Vendor shall have 30 days to request a meeting with OPWDD to explain the ruling and to demonstrate the finding to be incorrect or to correct/resolve any issues affecting the Vendor's responsibility. If OPWDD's findings remain unchanged after meeting with the Vendor, the Vendor shall be removed from consideration for this contract.

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of the OPWDD or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

#### 6.14.1 **Suspension of Work (for Non-Responsibility)**

The Commissioner of the OPWDD or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract resulting from this RFP, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of the OPWDD or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

#### 6.14.2 **Termination (for Non-Responsibility)**

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OPWDD officials or staff, the Contract may be terminated by the Commissioner of the OPWDD or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of the OPWDD or his or her designee to be non-responsible. In such event, the Commissioner of the OPWDD or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

The Vendor that is awarded this contract shall update the Vendor Responsibility Questionnaire as provided in section 3.1.5 of this RFP, whenever such information changes and prior to any contract extensions and/or amendments. In the case of an assignment, a Vendor Responsibility Questionnaire must be submitted for the Contractor and Subcontractors. If the Vendor is

determined on the basis of new or previously undisclosed information, to be not responsible, the contract may be terminated, at OPWDD's sole discretion.

### 6.14.3 EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES

#### 6.14.3.1 Return of Data

The Contractor shall return Data in a format agreed upon with the OPWDD. This can, if specified within the contract, be carried out by providing an application programmable interface or other such efficient electronic tools. The Contractor must certify all Data has been removed from its system and removed from backups within timeframes established in the contract or as agreed to with the OPWDD.

#### 6.14.3.2 Suspension of Services

During any period of suspension of service, the OPWDD shall have full access to all Data at no charge. This can, if specified within the contract, be carried out by providing an application programmable interface or other such efficient electronic tools. The Contractor shall not take any action to erase and/or withhold any OPWDD Data, except as directed by the OPWDD.

#### 6.14.3.3 Expiration or Termination of Services

Upon expiration or termination of the contract, the OPWDD shall have full access to all Data for a period of 60 calendar days. Unless noted in the original contract, this period will be covered at no charge. This can, if specified within the contract, be carried out by providing application programmable interface or other such efficient electronic tools. During this period, the Contractor shall not take any action to erase and/or withhold any Data, except as directed by the OPWDD. OPWDD shall have the right to specify a period in excess of 60 calendar days.

#### 6.14.3.4 Contractor Performance Audit

The Contractor shall allow the OPWDD to assess Contractor's performance by providing any materials requested in the contract (e.g., page load times, response times, uptime, fail over time). The OPWDD may perform this Contractor performance audit with a third party at its discretion, at the OPWDD's expense.

The Contractor shall perform an independent audit of its Data Centers, at least annually, at Contractor expense. The Contractor will provide a data owner facing audit report upon request by the OPWDD. The Contractor shall identify any confidential, trade secret, or Proprietary information in accordance with section 6.5 of this RFP.

#### Personnel Separation of Duties

The OPWDD Agreement may require the separation of job duties, and that Contractor staff knowledge of Data be limited to that which is absolutely needed to perform job duties.

#### 6.14.3.5 Business Continuity/Disaster Recover (BC/DR) Operations

If required in the OPWDD Agreement, the Contractor shall provide a Business Continuity and Disaster Recovery plan specific to the entire Cloud Solution provided. The Contractor shall specify how the BC/DR plan will impact access to the required features and functionality of the Cloud Product associated with the OPWDD Agreement.

**6.14.4 Vendor Responsibility Status**

Procurement laws and guidelines require the award of New York State contracts to responsible contractors. Vendor responsibility generally means that a contractor has the integrity to justify the award of public dollars and the capacity to fully perform the requirements of the contract. Instructions for documenting vendor responsibility are included in Attachment 1: Attestation Checklist (Administrative Proposal)

During the period of the contract, the successful Bidder shall notify OPWDD of any changes in vendor responsibility disclosures. The State reserves the right to terminate the contract for non-responsibility or failure of the successful Bidder to disclose accurately.

**6.15 Termination**

The Agreement shall be subject to the following termination provisions:

- 6.15.1 All or any part of the Agreement may be terminated by OPWDD in the event of failure of the Contractor to perform within the time requirements set forth in the Agreement.
- 6.15.2 All or any part of the Agreement may be terminated by OPWDD for cause upon the failure of the Contractor to comply with the terms and conditions of the Agreement, including the attachments hereto, provided that OPWDD shall give the Contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand - receiving the Contractor's receipt therefore, such written notice to specify the Contractor's failure and the termination of the Agreement. Termination shall be effective ten business days from receipt of such notice, established by the receipt returned to OPWDD, unless the Contractor, in the opinion of OPWDD, has cured said failure. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- 6.15.3 The Agreement may be terminated for convenience, provided that OPWDD shall give written notice to the Contractor not less than 30 days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand-delivered with receipt made. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of the Contractor's receipt for notice in the case of hand delivery. In the case of termination under this subsection, OPWDD agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith. The Contractor, on its part, agrees to incur no new obligations after receipt of notification of termination and to cancel as many outstanding obligations as possible.
- 6.15.4 The Agreement may be deemed terminated immediately at the option of OPWDD upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by OPWDD to the Contractor.
- 6.15.5 Should OPWDD determine that Federal and State funds are unavailable; OPWDD may terminate the Agreement immediately upon notice to the Contractor. If the initial notice is oral notification, OPWDD shall follow this up immediately with written notice. OPWDD will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from OPWDD.
- 6.15.6 In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion and the Contractor shall cancel as many outstanding obligations as possible.

The Contractor shall take all reasonable measures to mitigate any damages for which OPWDD may be liable. OPWDD will not be obligated to pay the Contractor for any lost and/or anticipated profits.

6.15.7 If the Agreement is terminated for any reason, OPWDD shall have the right to award a new contract to a third party. In the event of termination for cause, OPWDD shall have the right to seek recovery of damages, and for all additional costs incurred in reassigning the contract.

6.15.8 OPWDD reserves the right to terminate the award resulting from this procurement in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, OPWDD may exercise its termination right by providing written notification to the award recipient.

6.15.9 **Contractor Transition Responsibilities**

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of services to the State or a third party designated by the State. The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must provide the State with data generated from the inception of the Contract through the date on which Contract is terminated in a comma-delineated format unless otherwise requested by the State.



## **APPENDIX A**

# **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

October 2019

**TABLE OF CONTENTS**

- 1. Executory Clause**
- 2. Non-Assignment Clause**
- 3. Comptroller's Approval**
- 4. Workers' Compensation Benefits**
- 5. Non-Discrimination Requirements**
- 6. Wage and Hours Provisions**
- 7. Non-Collusive Bidding Certification**
- 8. International Boycott Prohibition**
- 9. Set-Off Rights**
- 10. Records**
- 11. Identifying Information and Privacy Notification**
- 12. Equal Employment Opportunities For Minorities and Women**
- 13. Conflicting Terms**
- 14. Governing Law**
- 15. Late Payment**
- 16. No Arbitration**
- 17. Service of Process**
- 18. Prohibition on Purchase of Tropical Hardwoods**
- 19. MacBride Fair Employment Principles**
- 20. Omnibus Procurement Act of 1992**
- 21. Reciprocity and Sanctions Provisions**
- 22. Compliance with Breach Notification and Data Security Laws**
- 23. Compliance with Consultant Disclosure Law**
- 24. Procurement Lobbying**
- 25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors**
- 26. Iran Divestment Act**
- 27. Admissibility of Contract**

## **STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State

approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, the Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on the Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, NY 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds

in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is the Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. The Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has

been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division of Small Business  
Albany, NY 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming,

engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.** To the extent this agreement is a contract as defined by Tax Law § 5-a, if the Contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, the Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

The Contractor further certifies that it will not utilize on this contract any subcontractor that is identified on the Prohibited Entities List. The Contractor agrees that should it seek to renew or extend this contract, it must provide the same certification at the time the contract is renewed or extended. The Contractor also agrees that any proposed Assignee of this contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

*Remainder of Page Intentionally Left Blank*

**APPENDIX A SUPPLEMENT – 1: AGENCY SPECIFIC TERMS AND CONDITIONS**

The parties to the attached Contract, Contract Enter Contract Number here, agree to be bound by the following, which are hereby made part of said Contract.

1. The Contractor shall not discriminate against any applicant for services for reasons based upon religion or religious belief. The Contractor shall not use any monies received from the State to benefit or inhibit a particular religion or religious belief.
2. The relationship of the Contractor to the State is that of an independent contractor and the officers and employees of the Contractor shall conduct themselves in a manner consistent with such status, shall neither hold themselves out as nor claim to be officers, employees, or agents of the State by reason thereof, and shall not make any claim, demand or application to or for any right of the State, including, but not limited to, Workers' Compensation coverage, unemployment insurance benefits, Social Security coverage or retirement membership credit.
3. The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons or property, including death, arising out of or related to the services to be rendered by the Contractor. It shall indemnify and hold harmless the State and its officers and employees from any and all claims, suits, actions, damages and costs of every nature and description arising out of or related to the services to be rendered by the Contractor or the violation by the Contractor, its employees, servants, agents, or contractors, of any law, ordinance, rule or regulation in connection therewith.
4. Neither party shall be liable for losses, defaults, or damages under this Contract which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Contract, due to or because of acts of God, the public enemy, earthquake, floods, typhoons, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party shall resume full performance of such obligations and responsibilities promptly upon removal of any such cause.
5. If any term or provision of the Contract shall be found to be illegal or unenforceable, then, notwithstanding, the Contract shall remain in full force and effect and such term or provision shall be deemed stricken from the Contract.
6. The Contractor shall comply with all statutory requirements relating to the confidentiality of information obtained during the performance of the Contract.
7. The Contractor shall certify that payment requests do not duplicate reimbursement of costs and services received from other sources.
8. Upon termination of the Contract, there shall be a reconciliation based upon the services provided by the Contractor and the payments made by the State. The Contractor shall refund to the State any overpayments made by the State pursuant to the Contract.
9. Unless otherwise provided, the Contract may be amended, modified, renewed, and/or renegotiated by written agreement of the parties which shall become effective upon approval by the Office of the State Comptroller.
10. Unless otherwise provided, the OPWDD may cancel the Contract without cause upon serving thirty (30) days' written notice on the Contractor. Cancellation by mutual agreement of all parties to the Contract will be allowed subject to documentation in writing.
11. No part of the Contractor's income or resources shall be used directly or indirectly for the benefit of, or payment to, any State employee for services provided under this Contract other than employees whose names are furnished to the OPWDD and no employee so identified shall receive any benefit or payment under this Contract without prior written approval by the OPWDD.
12. This Contract contains all the terms and conditions agreed upon by the parties and no statement or representation, oral or written, express or implied, shall be deemed to exist or to bind either party or to vary any of the terms and conditions of the Contract.

13. Where applicable, the Contractor shall maintain eligibility for reimbursement from any program that provides payment for services and shall apply for and obtain all funds available for the program from any public or private source. Upon request, the OPWDD shall assist in establishing the Contractor's eligibility for such funds.
14. The Contractor must comply with the provisions of Mental Hygiene Law Section 16.33 and Executive Law Section 845-b, the regulations related to criminal history record checks adopted by OPWDD in connection with the fingerprinting of certain individuals and the policies and procedures of OPWDD in connection therewith. In particular, any individual employed by or affiliated as a volunteer with a provider of services as defined in Section 1.03(5) of the Mental Hygiene Law who has regular and substantial unsupervised or unrestricted physical contact with people receiving services (such contact hereinafter referred to as "consumer contact") and who hereafter submits or who has submitted an application for employment or otherwise becomes or became affiliated with the Contractor on or after April 1, 2005 (such individual hereinafter referred to as "a subject party") shall be required to consent and submit to a criminal history record check. Upon the completion thereof, the Contractor shall deny or hold in abeyance employment or volunteer opportunities involving consumer contact to a subject party when directed to do so by OPWDD and in those instances the Contractor shall notify the subject party that his or her criminal history record information is the basis for such action taken by the Contractor.
15. Federal False Claims Act (31 USC Sections 3729-3733) and the New York State False Claims Act (State Finance Law Article XIII, Sections 187-194) – the Contractor is bound by all of the related laws. The law requires that OPWDD provide its contractors with information about the federal False Claims Act, the New York State False Claims Act, and other federal and State laws that play a role in preventing and detecting fraud, waste and abuse in federal health care programs. This information must include the whistleblower protections that are in these laws. OPWDD must also provide its contractors with information about OPWDD's own policies and procedures for detecting and preventing waste, fraud and abuse. You can find detailed descriptions of these laws, their whistleblower protections and OPWDD's policies on the OPWDD website at [www.opwdd.ny.gov](http://www.opwdd.ny.gov). At the home page, select Information for Providers on the left side of the page, then select False Claims Recoveries. You can also visit the New York State Medicaid Inspector General website at [www.omig.ny.gov](http://www.omig.ny.gov) to obtain information about these laws. A paper copy of the detailed descriptions of the laws and of OPWDD policies and procedures related to waste, fraud and abuse is available from the OPWDD Contract Management Unit, 4th Floor, 44 Holland Ave., Albany NY 12229-0001. As a contractor of OPWDD, you are required to participate in the reviews and audits described in OPWDD's policies, and to abide by these policies with respect to funding for OPWDD services. You are also required to make the information at the OPWDD website address listed above available to all your employees and to all of your contractors involved in performing work under your contract with OPWDD.
16. Both the United States Department of Health and Human Services and the Office of the Medicaid Inspector General (OMIG) can exclude persons and organizations from federal and State healthcare programs. If this Contract is funded through the New York State Medicaid program, the following applies:

**For Contractors**

The Contractor represents that:

- (1) The United States Secretary of Health and Human Services has not excluded the Contractor from participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§1320a-7 or 1320a-7a, or excluded the Contractor from eligibility to provide services under the Social Security Act on a reimbursable basis under 42 U.S.C. §1320c-5;
- (2) The Secretary of Health and Human Services has not directed the New York State Department of Health or any other New York State government agency to exclude the Contractor from participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§1320a-7(d) or 1320a-7a(a);
- (3) The New York State Medicaid Inspector General has not excluded the Contractor from participation in the New York Medicaid program under 18 NYCRR Part 515; and
- (4) No federal or State agency has otherwise excluded the Contractor from participation in the New York Medicaid program or excluded the Contractor from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis.

If, during the term of this Contract, the Contractor is excluded from participation in a federal health care

program or the New York Medicaid program, or is excluded from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis, under the authorities stated above, this Contract shall be immediately terminated.

17. On February 12, 2007 the Diesel Emissions Reduction Act took effect as law. Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL"), it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirements of the law apply to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. As a contract vendor, the Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and State or regional public authorities. Therefore, the Bidder/Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this Contract will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the Bidder/Contractor.

18. Notices:

- (1) All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

**State of New York, Office for People with Developmental Disabilities (OPWDD)**

Name: Marc L. Kleinhenz

Title: Director of Contracts and Grants

Address: 44 Holland Ave., Albany, NY 12229

Telephone Number: (518) 474-7719

E-Mail Address: Marc.L.Kleinhenz@opwdd.ny.gov

**Contractor Name**

Name: Enter Here

Title: Enter Here

Address: Enter Here

Telephone Number: Enter Here

E-Mail Address: Enter Here

- (2) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- (3) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

19. 14 NYCRR Sec. 624.5(u)(2) An agency shall not take any retaliatory action against an employee or agent who believes that he or she has reasonable cause to suspect that a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the



VPCR and/or OPWDD in accordance with this section and/or if the employee or agent cooperates with the investigation of a report made to the VPCR or OPWDD.

20. General conditions relating to Article 15-A and Article 17B of the Executive Law are set forth in the following pages.

*Remainder of Page Intentionally Left Blank*

**APPENDIX A SUPPLEMENT – 2: MWBE Requirements and Procedures****PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES  
REQUIREMENTS AND PROCEDURES****I. General Provisions**

- A. The Office for People With Developmental Disabilities (“OPWDD”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OPWDD, to fully comply and cooperate with OPWDD in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to OPWDD pursuant to the Contract and applicable law.

**II. Contract Goals**

- A. For purposes of this Contract, OPWDD hereby establishes an overall goal of 30% percent for MWBE participation, 17% percent for New York State-certified minority-owned business enterprise (“MBE”) participation and 13% percent for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract]
- D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
  2. Any responses by MWBEs to the Contractor’s outreach;
  3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
  4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by OPWDD with MWBEs; and,
  5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

### **III. Equal Employment Opportunity (“EEO”)**

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  2. The Contractor shall submit an EEO policy statement to OPWDD within seventy-two (72) hours after the date of the notice by OPWDD to award the Contract to the Contractor.
  3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, OPWDD may require the Contractor or subcontractor to adopt a model statement (see Form – Equal Employment Opportunity Policy Statement).
  4. The Contractor’s EEO policy statement shall include the following language:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. The Contractor shall request each employment OPWDD, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment OPWDD, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Staffing Plan (Complete only if contract value is in excess of \$250,000)

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by OPWDD.

D. Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by OPWDD on a [MONTHLY for Construction/QUARTERLY for goods and services] basis during the term of the Contract.
  2. Separate forms shall be completed by the Contractor and any subcontractors.
- E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### **IV. MWBE Utilization Plan**

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by OPWDD, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to OPWDD, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OPWDD shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

#### **V. Waivers**

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by OPWDD. Such waiver request must be supported by evidence of the Contractor’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, OPWDD shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If OPWDD, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, OPWDD] may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### **VI. Quarterly MWBE Contractor Compliance Report**

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to OPWDD by the 10<sup>th</sup> day following the end of each quarter during the term of the Contract.

#### **VII. Liquidated Damages - MWBE Participation**

- A. Where OPWDD determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to OPWDD liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by OPWDD, the Contractor shall pay such liquidated damages to OPWDD within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

*Remainder of Page Intentionally Left Blank*

## MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE) – EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY STATEMENT

By signing this Contract, the Awardee/Contractor/Organization agrees to adopt the following policies with respect to the project/program/product being developed or services rendered at the New York State Office for People With Developmental Disabilities.

### MWBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from OPWDD and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

### EEO

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of OPWDD, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

## STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

<b>Solicitation No.:</b>	<b>Reporting Entity:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
<b>Offeror's Name:</b>		<input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor <b>Subcontractor Name:</b> _____
<b>Offeror's Address:</b>		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification													
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)	
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary/Apprentices																	
Totals																	
<b>PREPARED BY (Signature):</b>								<b>TELEPHONE NO.:</b>						<b>DATE:</b>			
								<b>EMAIL ADDRESS:</b>									
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>																	
								<b>Submit completed with bid or proposal</b> <b>MWBE 101 (Rev 03/11)</b>									

## STAFFING PLAN INSTRUCTIONS

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (MWBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

### Instructions for completing:

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'.  
Contact the OMWBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

### RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN / ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

### OTHER CATEGORIES

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies);
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female

## APPENDIX A SUPPLEMENT – 3: SDVOB Requirements and Procedures

**PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED  
SERVICE- DISABLED VETERAN-OWNED BUSINESSES****I. Contract Goals**

- A. The OPWDD hereby establishes an overall goal of 6 percent for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the Directory of New York State Certified SDVOBs found at <https://online.ogs.ny.gov/SDVOB/search>.

Questions regarding compliance with SDVOB participation goals should be directed to OPWDD's SDVOB Administrator at [minority.women.business.enterprise@opwdd.ny.gov](mailto:minority.women.business.enterprise@opwdd.ny.gov).

Additionally, following Contract execution, the Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development (518) 474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. The Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

**II. SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the OPWDD.
- C. The OPWDD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of the OPWDD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, the Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to the OPWDD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the OPWDD to be inadequate, the OPWDD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five (5) business days of notification by the OPWDD, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- E. The OPWDD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - c) If a Bidder fails to submit a request for waiver; or
  - d) If the OPWDD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, the Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB Contract goals set forth above.
- G. The Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the OPWDD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

### **III. Request for Waiver**

- A. Prior to submission of a request for a partial or total waiver, the Bidder/Contractor shall contact OPWDD's SDVOB Administrator at [minority.women.business.enterprise@opwdd.ny.gov](mailto:minority.women.business.enterprise@opwdd.ny.gov) for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the OPWDD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, the OPWDD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. The Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the OPWDD but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If the OPWDD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101), determines that the Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regard to such non-compliance, the OPWDD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of SDVOB Contract goals.

Waiver requests should be sent to the OPWDD.

### **IV. Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- A. Copies of solicitations to SDVOBs and any responses thereto.
- B. Explanation of the specific reasons each SDVOB that responded to the Bidders/Contractors' solicitation was not selected.
- C. Dates of any pre-bid, pre-award or other meetings attended by the Contractor, if any, scheduled by the OPWDD with certified SDVOBs whom the OPWDD determined were capable of fulfilling the SDVOB goals set in the Contract.
- D. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- E. Other information deemed relevant to the waiver request.

#### **V. Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), the Contractor is required to report Monthly SDVOB Contractor Compliance to the OPWDD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available on the Office of General Services' Division of Service-Disabled Veterans' Business Development's website: <https://ogs.ny.gov/veterans/> and should be completed by the Contractor and submitted to the OPWDD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to OPWDD's SDVOB Administrator at [minority.women.business.enterprise@opwdd.ny.gov](mailto:minority.women.business.enterprise@opwdd.ny.gov).

#### **VI. Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the Contract and the Contractor shall pay damages as set forth therein.

All forms are available at: <https://ogs.ny.gov/veterans/>



# SDVOB UTILIZATION PLAN

☐ Initial Plan ☐ Revised plan ☐ Contract/Solicitation #

**INSTRUCTIONS:** This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS **Certified** Service-Disabled Veteran-Owned Business (SDVOB) under the contract. By submission of this Plan, the Bidder/Contractor commits to making good faith efforts in the utilization of SDVOB subcontractors and suppliers as required by the SDVOB goals contained in the Solicitation/Contract. Making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward SDVOB utilization. Attach additional sheets if necessary.

BIDDER/CONTRACTOR INFORMATION		SDVOB Goals In Contract
Bidder/Contractor Name:	NYS Vendor ID:	%
Bidder/Contractor Address (Street, City, State and Zip Code):		

Bidder/Contractor Telephone Number:	Contract Work Location/Region:
-------------------------------------	--------------------------------

Contract Description/Title:

## CONTRACTOR INFORMATION

Prepared by (Signature):	Name and Title of Preparer:	Telephone Number:	Date:
--------------------------	-----------------------------	-------------------	-------

Email Address:

**If unable to meet the SDVOB goals set forth in the solicitation/contract, bidder/contractor must submit a request for waiver on the SDVOB Waiver Form.**

SDVOB Subcontractor/Supplier Name:	
------------------------------------	--

Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
---	-----------------------------	----------------

Address:	Email Address:
----------	----------------

Detailed description of work to be provided by subcontractor/supplier:

Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ \_\_\_\_\_ or \_\_\_\_\_%

SDVOB Subcontractor/Supplier Name:	
------------------------------------	--

Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
---	-----------------------------	----------------

Address:	Email Address:
----------	----------------

Detailed Description of work to be provided by subcontractor/supplier:

Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ \_\_\_\_\_ or \_\_\_\_\_%

## FOR [Agency] USE ONLY

[Agency] Authorized Signature:	<input type="checkbox"/> Accepted	<input type="checkbox"/> Accepted as Noted	<input type="checkbox"/> Notice of Deficiency
--------------------------------	-----------------------------------	--	---

NAME (Please Print):	SDVOB %/\$	Date Received:	Date Processed:
----------------------	------------	----------------	-----------------

Comments:

**NYS CERTIFIED SDVOB SUBCONTRACTOR/SUPPLIER INFORMATION:** The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/default.asp>

**Note:** All listed Subcontractors/Suppliers will be contacted and verified by [Agency].



## ADDITIONAL SHEET

<b>Bidder/Contractor Name:</b>		<b>Contract/Solicitation #</b>	
<b>SDVOB Subcontractor/Supplier Name:</b>			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			
<b>SDVOB Subcontractor/Supplier Name:</b>			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			
<b>SDVOB Subcontractor/Supplier Name:</b>			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			
<b>SDVOB Subcontractor/Supplier Name:</b>			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			
<b>SDVOB Subcontractor/Supplier Name:</b>			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

## **Appendix A SUPPLEMENT – 4: Federal Assurances and Certifications**

Certain of these assurances may not be applicable to your project or program. If you have questions, contact the Office of People with Developmental Disabilities (OPWDD). By signing and submitting this application, contract or contract amendment an authorized representative of the applicant or contractor asserts that the applicant or contractor:

1. Has the legal authority to apply for Federal Assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of the project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Executive Order Number 11246 as amended by E.O. 11375 relating to Equal Employment Opportunity, which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Contract Work Hours and Safety Standards Act (40

U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notifications of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

13. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

14. This contract is funded in whole or part with federal funds under the CDFA No 93.630. OPWDD is a pass-through entity of these federal funds. As a recipient of these federal funds, the Contractor may be determined, to be a sub-recipient of federal assistance. Sub-recipients of federal funds have the responsibility of reporting to OPWDD in addition to the sub-recipient's responsibility to file reports with the federal clearinghouse designated by Office of Management and Budget (OMB). If this contract will require the Contractor to expend \$750,000 or more of federal funds from this contract or in total with other contracts or grants of federal funds or assistance in the Contractor's fiscal year, regardless of the source of the funding, the Contractor is required to comply with the terms and provisions of the OMB Circular A-133. The Contractor will notify OPWDD if it reasonably expects to expend the sum of \$750,000 of federally derived funds, in its fiscal year, as soon as it has notice of awards, grants or contracts totaling \$750,000 in federal funds, but in no event later than the close of the calendar year. The Contractor will have an audit performed pursuant to the requirements of OMB Circular A-133 and provide OPWDD with the required reports within 30 days of the Contractor's receipt of the independent audit report or within 9 months after the close of the Contractor's fiscal year, whichever event is sooner.

15. Certifies that Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The contractor/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions of children's services and all subgrantees shall certify accordingly.

16.A. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below. (1) The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false

certification, or otherwise violates the requirements of the Drug-Free Workplace Act (41 USC 702 et seq.), the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. (2) For grantees other than individuals, Alternate I applies. For grantees who are individuals, alternate II applies. (3) Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements. (4) Workplace identifications must include the actual address of buildings (or parts of buildings) or sites where work under the grant takes place. Categorical descriptions may be used (e.g. all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios). (5) If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph four). (6) Definitions of terms in the Non-procurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules: Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15); Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes; Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance; Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (a) All direct charge employees; (b) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and (c) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g. volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

16.B. Alternate I (Grantees Other Than Individuals). 1. The grantee certifies that the applicant will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; (b) Establishing an ongoing drug-free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a) above; (d) Notifying the employee in the statement required by paragraph (a) above, that, as a condition of employment under the grant, the employee will (1) Abide by the terms of the statement; and (2) Notify the employer in writing of his or her conviction for violation of a criminal drug status occurring in the workplace no later than five calendar days after such conviction; (e) Notify the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant; (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted; (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (2) Requiring such a Federal, State, or local health, law enforcement, or other appropriate agency; (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f). For purposes of paragraph (e) regarding agency notification of criminal drug convictions, the DHHS has designated the following central point for receipt of such notices: Division of Grants Policy and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C., 20201

16.C. Alternate II (Grantees Who Are Individuals). 1. The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; 2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

17. Agrees that, a) By signing and submitting this proposal, the prospective primary applicant is providing the certification set out below. b) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. c) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. d) The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstance. e) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Office of People with Developmental Disabilities for assistance in obtaining a copy of those regulations. f) The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. g) The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction" provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. h) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs. i) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. j) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

18. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

19. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for

compliance with the Copeland "Anti-Kickback" Act, 18 U.S.C. 874, as supplemented by Department of Labor regulations, 29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States." The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

20. Davis-Bacon Act as amended (40 U.S.C. 276a to 276a-7) - When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act, 40 U.S.C. 276a to a-7, and as supplemented by Department of Labor regulations, 29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate of not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination issued by the Department of Labor in each solicitation and the award of the contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the HHS awarding agency.

21. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient (See also 45 CFR Part 93).

22. Debarment and Suspension (E.O.s 12549 and 12689) - Certain contracts shall not be made to parties listed on the non-procurement portion of the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." (See 45 CFR Part 76.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than E.O. 12549. Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

23. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

24. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

25. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Rev 07/2020

## **APPENDIX B: OPWDD CONTRACT BOILERPLATE**

The Procurement, the Bidder's Proposal, and the contract award resulting from this Request for Proposals (RFP) are subject to and incorporate the following terms and conditions.

### **1. CONTRACT TERM**

This Contract shall commence on **[Contract Start Date]** and shall continue for X months/years, subject to the termination provisions contained in the subsequent Sections 22 and 23, titled Termination and Default, respectively, and the document titled Standard Clauses for New York State Contracts, Appendix A. At OPWDD's discretion, this Contract may be renewed for a one (1) year extension. Any extension will be subject to necessary approvals by the OPWDD's approval agencies. Fees shall not be increased for the five (5) year Contract term or the one (1) year extension.

### **2. THE AMERICAN RESCUE PLAN ACT**

This contract is funded and executed under the American Rescue Plan Act (ARPA) signed into law on March 11, 2021. Section 9817 of ARPA provides a 10 percent increase in Federal Medical Assistance Percentage (FMAP) to state Medicaid programs from April 1, 2021 to March 31, 2022 to supplement existing state expenditures on home and community-based services (HCBS). As detailed in State Medicaid Direct Letter #21-003, issued by the Centers for Medicare & Medicaid Services (CMS) on May 13, 2021 (the SMDL), CMS affords states the ability to invest or reinvest these funds in a variety of ways that expand and enhance investments in Medicaid-covered HCBS, address COVID-related needs, and build HCBS capacity. This opportunity enables OPWDD to make significant investments that would expand, enhance or strengthen HCBS for Medicaid members.

### **3. MODIFICATION OF CONTRACT**

This Contract may be amended only by mutual written consent of the parties, and approval by the New York State Office of the Attorney General and the Office of the State Comptroller (OSC), if required.

### **4. INTEGRATION, MERGER, AND ORDER OF PRECEDENCE**

The Contract shall be comprised solely of the following documents. In the event of an inconsistency or conflict in terms, precedence shall be given in the order indicated:

- Appendix A Standard Clauses for New York State Contracts
- Appendix A – Supplements 1 - 4
- any Amendments and Addendum to the Contract
- the Contract, Appendices B–D, any Attachments and Exhibits
- the Request for Proposals (RFP)
- the Contractor's Proposal.

All prior agreements, representations, statements, negotiations, and undertakings are superseded.

### **5. CONTRACTOR RESPONSIBILITY AS DEFINED BY STATE FINANCE LAW**

The Contractor must remain responsible, as defined by State Finance Law, relevant case law and applicable guidelines, throughout the term of the Contract. Failure to do so may result in suspension or termination of the Contract.

The Contractor must present evidence of its continuing legal authority to do business in NYS, its integrity,

experience, ability, prior performance, and organizational and financial capacity upon request by the State. The Contractor is responsible for ensuring that any proposed system or technology fulfills the requirements and terms established during the duration of the Contract.

The State reserves the right to suspend any or all activities under this Contract, at any time, if it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice of suspension and must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice lifting the suspension order.

## **6. INDEPENDENT CONTRACTOR**

The Contractor is an independent contractor and its officers, employees, subcontractors and agents are not and shall not act as State employees in the performance of the Contract. The Contractor, its officers, employees, subcontractors and agents are not entitled to any of the benefits associated with employment by the State. The Contractor agrees, during the term of this Contract, to maintain, at the Contractor's expense, those benefits to which its employees would otherwise be entitled by law, including health benefits and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the State with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

## **7. CONTRACTOR PERSONNEL**

All of the Contractor's officers, employees, subcontractors or agents performing work under the Contract must meet or exceed the technical and training qualifications set forth in the Contract; must comply with all security and administrative requirements of the OPWDD; must possess the necessary qualifications, training, licenses and permits as may be required within the jurisdiction where the Services specified are to be provided or performed; and shall be legally entitled to work in such jurisdiction. All persons, corporations or other legal entities that perform Services under the Contract on behalf of the Contractor shall, in performing the Services, comply with all applicable Federal and State laws concerning employment in the United States.

The OPWDD, in its sole discretion, may refuse access to State systems and facilities or require removal from any State facility any employee of the Contractor or its subcontractors performing work under this Contract whom the OPWDD determines poses a security risk, has a work performance the OPWDD finds inadequate or unacceptable, or otherwise fails to meet OPWDD business requirements or expectations. Such action by the OPWDD shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms.

## **8. BACKGROUND CHECKS**

The Contractor employees or subcontractors who perform services under this Contract may be required to undertake and complete a full New York State Police fingerprint background investigation process, which will include a federal criminal justice site security check, as required by ITS, the OPWDD, or NYS law, rules, regulations and policies, prior to providing services. Any costs associated with the background checks, including costs related travel, will be borne by the Contractor.

## **9. EMPLOYMENT REPORTING REQUIREMENTS**

To the extent that this is a consulting services contract, as described in §8(17)(f) of the New York State Finance Law, the Contractor shall comply with all OPWDD requests and requirements related to reporting under §163(4)(g) of the New York State Finance Law. Furthermore, all subcontracts entered into by the Contractor for purposes of performing the Contract shall contain a provision whereby subcontractors agree to comply with OPWDD requests and requirements related to reporting under §163(4)(g) of the New York State Finance Law. Reports and forms filed by the Contractor pursuant to this section shall be available for public inspection and copying under the provisions of the Freedom of Information Law (FOIL).

## **10. COOPERATION WITH THIRD PARTIES**

Upon request by the State, the Contractor shall fully cooperate with any third party designated by the State, within the scope of services under the Contract, such as but not limited to other contractors or subcontractors retained by the State.

#### **11. COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS**

Upon request by the State, the Contractor shall cooperate with the State in any investigation, audit, or other inquiry related to the Procurement or the resulting Contract, or any related litigation, at no cost to the State. This provision shall survive the termination of the Contract.

#### **12. WORK OUTSIDE THE SCOPE OF THE CONTRACT**

The Contractor shall provide the OPWDD the services set forth and defined in Appendix B, Scope of Work, attached hereto and made part of this Contract. The Contractor must not perform work outside the scope of the Contract, unless such work is authorized by a properly executed, OSC-approved written amendment to the Contract. Work not so authorized will not be compensated.

#### **13. NOTICE OF SUBSTANTIAL CHANGE IN CONTRACTOR STATUS**

In addition to the requirements of NYS Finance Law §138 (requiring the State's approval of subcontractors and assignments and/or conveyances), the Contractor shall notify the State of any substantial change in the ownership or financial viability of the Contractor, its Affiliates, subsidiaries, divisions, or partners, in writing immediately upon occurrence. "Substantial change" means: (i) sales, acquisitions, mergers, or takeovers of the Contractor, its Affiliates, subsidiaries, divisions, or partners that result in a change in the controlling ownership or assets of such entity after the submission of the Bid; (ii) entry of an order for relief under Title 11 of the United States Code; (iii) the making of a general assignment for the benefit of creditors; (iv) the appointment of a receiver of the Contractor's business or property or that of its Affiliates, subsidiaries, divisions, or partners; or action by the Contractor, its Affiliates, subsidiaries, divisions, or partners under any State insolvency or similar law for the purposes of its bankruptcy, reorganization, or liquidation; or (v) court ordered liquidation of the Contractor, its Affiliates, subsidiaries, divisions, or partners.

Upon the State's receipt of such notice, the State shall have 30 business days from the date of notice to review the information. The Contractor may not transfer the Contract to or among Affiliates, subsidiaries, divisions, or partners, or to any other person or entity, without the express written consent of the State. In addition to any other remedies available at law or equity, the State shall have the right to cancel the Contract, in whole or in part, for cause, if it finds, in its sole judgment, that such substantial change adversely affects the delivery of Services or is otherwise not in the best interests of the State.

#### **14. NOTICE OF CIRCUMSTANCES EXPECTED TO ADVERSELY AFFECT CONTRACTOR'S PERFORMANCE**

The Contractor shall immediately notify the OPWDD upon learning of any situation that can reasonably be expected to affect the delivery of Services under the Contract adversely. If such notification is verbal, the Contractor shall follow such initial verbal notice with a written notice to the OPWDD, which shall include a description of the situation and a recommendation of a resolution within three calendar days of the Contractor becoming aware of the situation. The Contractor's failure to provide the OPWDD with notice that should have been provided hereunder may be deemed a material breach of the Contract and a basis for termination for cause.

#### **15. NOTICE**

All notices given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered. Such notices shall be addressed as set forth below, or to such different addresses as the parties may specify, from time to time, by written notice to the other party. The parties agree to mutually designate individuals as their respective representatives for purposes of this Contract.

For the NYS Office for People with Developmental Disabilities:

Marc L. Kleinhenz



Director of Contracts and Grants  
44 Holland Ave., 5<sup>th</sup> Fl.  
Albany, NY 12229  
(518) 474-7719  
[Marc.L.Kleinhenz@opwdd.ny.gov](mailto:Marc.L.Kleinhenz@opwdd.ny.gov)

For the Contractor:

Name  
Title  
Street Address  
City, State Zip  
( ) -  
Email Address

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

The parties may specify, from time to time, a new or different address in the United States as their address for purpose of receiving notice under this Contract by giving 15 days' written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Contract. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, problem resolution, and/or for dispute resolution.

## 16. PAYMENT

Payments for services rendered shall be as specified in the Contract. The State's payment obligations shall be governed by the provisions of the New York State Finance Law ("STF"). The Contractor shall certify that payment requests do not duplicate reimbursement of costs and services received from other sources. The OPWDD shall pay the Contractor in consideration of the services to be provided under this Contract in accordance with the provisions in Appendix C, Budget, and Appendix D, Billing and Payment Terms, attached hereto, for the periods of time indicated therein. The total payment for services provided under this Contract shall **not exceed XXX dollars and eighty-seven cents (\$ )**. Payment of any amount due to the Contractor under this Contract shall be contingent on the Contractor submitting invoices with supporting documentation in accordance with Appendix C, Budget, and Appendix D, Billing and Payment Terms, of this Contract. Travel will be undertaken as needed and will be consistent with the New York State Travel Guidelines. All travel costs must fall within the dollar value of this Contract.

### a. Payment Terms

The Contractor is accepting funding for this contract and will receive and administer all monies awarded under the New York State Vendor ID provided on the Face Page of this Contract. The Contractor agrees to accept advance payments, which OPWDD in its sole discretion may make, and which shall be recouped in accordance with the following:

- In order for OPWDD to advance the balance remaining on this contract prior to March 31, 2024 and unless otherwise notified, the Contractor must submit the final claim for payment of the balance remaining on the contract no later than February 15th, 2024.
- In the event that the Contractor must make a refund to the State for contract-related activities, including repayment of a portion of the advance or an audit disallowance, or for deliverables found to be incomplete or unacceptable, payment must be made payable as set forth in Appendix B Scope of Work, Appendix C Budget and Appendix D Billing and Payment Terms. The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Contact at the address specified in section 18, APPENDIX A SUPPLEMENT ONE: AGENCY SPECIFIC TERMS AND CONDITIONS herein.

- If at the end or termination of the Contract, there remains any unexpended balance of the monies advanced under the Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.
- b. **Outstanding Amounts Owed to the State:**  
Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under the resultant Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in section 16. a. herein.
- c. **Set-Off Rights:**

The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold, for the purposes of set-off, any moneys due to the Contractor under the Contract up to any amounts due and owing to the State with regard to the Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of setoff pursuant to an audit, the finalization of such audit by the State Agency, its representatives, or OSC.

## 17. ELECTRONIC PAYMENT REQUIREMENT

The Contractor shall provide complete and accurate billing invoices to the Office of General Services (OGS) Business Services Center (BSC) to be eligible for payment. Billing invoices submitted to the BSC must contain all information and supporting documentation required by the Contract. Payment for invoices submitted by the Contractor shall be rendered electronically, unless payment by paper check is expressly authorized by the OPWDD, in its sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with OSC's procedures to authorize electronic payments. Authorization forms are available at OSC's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. The Contractor acknowledges that it will not be eligible for payment on any invoices submitted under this Contract if it does not comply with OSC's electronic payment procedures, except where the OPWDD has expressly authorized payment by paper checks as set forth above.

## 18. WARRANTIES AND GUARANTEES

- a. **Contract Deliverables.** The Contractor warrants and represents that the Services required by the Contract shall be performed or provided in accordance with all terms and conditions, covenants, statements, and representations contained in this Contract. The Contractor's failure to meet pre-defined service levels may result in a credit or chargeback in an amount pre-determined by the parties.
- b. **Compliance with Laws.** The Contractor warrants and represents that, throughout the term of the Contract, in the performance of its obligations under the Contract, it will: (i) comply with all laws, ordinances, rules and regulations of any governmental entity, in each case to the extent applicable to the Contractor in its performance of Services hereunder; (ii) pay, at its sole expense, all applicable permits, licenses, tariffs, tolls, and fees; and (iii) give all notices required by any laws, ordinances, rules, and regulations of any governmental entity.
- c. **Workmanship Warranty.** The Contractor warrants and represents that all Services and deliverables shall meet the completion criteria set forth in the Contract and that services will be provided in a professional and workmanlike manner in accordance with commercially reasonable industry standards.

- d. **Personnel Eligible for Employment.** The Contractor warrants and represents that all personnel, including all subcontractor personnel, performing Services under this Contract are qualified to provide services, eligible for employment in the United States, and shall remain so throughout the term of the Contract. The Contractor shall provide such proof of compliance as is required by the OPWDD.
- e. **Survival of Warranties.** All warranties contained in the Contract shall survive termination of the Contract.

## **19. INDEMNIFICATION, LIMITATION OF LIABILITY**

### **a. Indemnification**

The Contractor shall be fully liable for the actions of its agents, officers, employees, partners, or subcontractors and shall defend and indemnify fully and save harmless the State from third party suits, actions, damages, and costs of every name and description relating to bodily injury and damage to real or tangible personal property to the extent caused by the negligence or willful misconduct of the Contractor, its agents, officers, employees, partners, or subcontractors while engaged in the performance of the services, without limitation, provided however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or negligent failure to act of the State.

The Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its agents, officers, employees, partners, and subcontractors of State and the OPWDD security procedures or policies resulting from any criminal acts committed by the Contractor's officers, agents, employees, and subcontractors while providing services under the Contract. This Section is not subject to the limitation of liability provisions of the Contract.

### **b. Indemnification for Intellectual Property Infringement**

The Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees and legal fees), claims, judgments, liabilities, and costs that may be assessed against the State in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the services, products, documentation, or deliverables furnished or utilized by the Contractor under this Contract, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit; (ii) the opportunity to take over, settle, or defend such action, claim or suit at the Contractor's sole expense; and (iii) assistance in the defense of any such action at the expense of the Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require the Contractor, at the Contractor's sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State shall require. This paragraph shall not apply to that portion of any infringement claim that results from (i) a material modification by the State, without the Contractor's approval, of any products, documentation, or deliverables furnished or utilized by the Contractor pursuant to this Contract, (ii) the failure of the State to use any corrections or modifications made available by the Contractor, (iii) information, materials, instructions or specifications provided by or on behalf of the State, or (iv) the use of the deliverable in combination with any product or data not provided by the Contractor whether or not with the Contractor's consent. If the State's use of any such deliverable, or any portion thereof, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Contractor, at its option and expense, shall have the right to (x) procure for the State the continued use of such deliverable, (y) replace such deliverable with a non-infringing deliverable, or (z) modify such deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by the Contractor, the replacement or modified deliverable is capable of performing substantially the same function. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, when it determines that there is an issue involving a significant public interest. This Section is not subject to the limitation of liability provisions of the Contract.

### **c. Limitation of Liability**

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation," and regardless of the basis on which the claim is made, the Contractor's liability under the Contract for direct damages shall be limited to the greater of the following: (i) \$1,000,000.00; or (ii) two times the amounts paid to the Contractor under the Contract during the 12 months of the Contract term which precede

the giving of notice of the claim by the State. For this purpose, amounts paid shall include, but not be limited to, payments made electronically, by check, by offset, or by the application of credits from the Contractor to the State. Unless otherwise specifically enumerated herein, neither party shall be liable for any incidental, punitive, consequential, indirect, or special damages of any kind that may result directly or indirectly from the performance of this Contract, including, without limitation, damages resulting from loss of use or loss of profit by the State, the Contractor, or by others, however caused, and regardless of the theory of liability, even if such party has been informed of the possibility of such damages. The limitations of liabilities, disclaimers of warranties, exclusivity of remedies, and other limitations are an essential element of the bargain between the parties (without which the transactions contemplated by this agreement would not occur) and will apply even if a remedy fails in its essential purpose.

**d. No Indemnification by the State**

The State does not agree to any indemnification provisions that require the State to indemnify or save harmless the Contractor or third parties.

**20. FEDERAL FUNDING CLAUSES**

To the extent that any of the goods or services provided under this Contract may be funded, in whole or in part, by federal funds, the Contractor agrees to comply with all applicable federal laws, rules, and regulations required for the receipt and/or expenditure of such funds pertaining to the following areas, as further set forth at Chapters II and XXX of 7 CFR and 45 CFR Parts 74 and 95, and described below:

- a. Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375, as supplemented by 41 CFR 60, and the nondiscrimination requirements of 45 CFR Parts 80, 84, and 90, and 7 CFR Parts 15, 15b, and 15d.
- b. Copeland "Anti-Kickback Act" (18 U.S.C. 874 and 40 U.S.C. 276c) which provides that all contracts/sub-grants greater than \$2,000 for construction or repair must have a provision requiring compliance with 18 U.S.C. 874, as supplemented by 29 CFR Part 3, which prohibits Contractors or sub-recipients from inducing, by any means, any person employed in construction, completion, or repair of public work to give up any part of compensation to which they are otherwise entitled and that the recipient shall report all suspected/reported violations to the federal awarding agency.
- c. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7), which requires all construction contracts awarded by recipients of more than \$2,000 to comply with the Act as supplemented by USDOL Regulations, 29 CFR Part 5 requiring all Contractors to pay wages to laborers and mechanics at a rate not less than the minimum wage specified by the Federal Secretary of Labor, which wages shall be paid not less than once a week. The recipient shall place a copy of the federally specified wage (the "prevailing wage") in each solicitation, and the award of a contract shall be conditioned upon acceptance of such a determination. The recipient must report all suspected/reported violations to the federal awarding agency.
- d. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) which requires, where applicable, that all construction contracts and other contracts involving employment of mechanics and laborers, requires compliance with 40 U.S.C. 327-333, as supplemented by USDOL Regulations 29 CFR 5, when said contracts exceed \$100,000, which references require that work in excess of 40 hours/week be recompensed at a rate at least 50% greater than the basic pay rate and that no work be required in unsanitary, hazardous, or dangerous conditions. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.
- e. Rights to Inventions Made under a Contract or Agreement – Contracts or Agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any resulting invention in accordance with 37 CFR Part 401 and any further implementing regulations issued by the USDHHS or USDA.
- f. Ownership Rights in Software or Modifications Thereof – The State shall have all ownership rights in software or modifications thereof and associated documentation designed, developed, or installed with

federal financial participation, and the federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, such software, modifications, and documentation; provided, however, that this sentence shall not apply to 'proprietary operating/vendor software packages' within the meaning of 45 CFR 95.617(c) and 7 CFR 277.18(l)(1)(iii). OPWDD will provide written notification to the Contractor when federal funds become available to fund payments to the Contractor pursuant to this Contract.

- g. Contracts and sub-grants of amounts more than \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.). Violations shall be reported to the USDHHS and the appropriate Regional Office of the Federal Environmental Protection Agency.
- h. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Requires that every Contractor under a contract for more than \$100,000, and every tier of Contractors or subcontractors thereunder, shall file certification, as required, that said Contractor will not and has not used any federal appropriated funds to pay any person or organization for influencing or attempting to influence any federal agency, member of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or award covered by such Amendment. A Contractor or subcontractor from any tier shall also disclose any lobbying with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure shall be forwarded up any applicable tiers to the recipient. (See also 45 CFR 93.)
- i. Debarment and Suspension. (Federal E.O.s 12549 and 12689) - Certain contracts shall not be awarded to parties listed on the non-procurement portion of the U. S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-Procurement Programs" in accordance with E.O.s 12549 and 12689 (see 45 CFR 76). Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals, prior to award.
- j. Contractor shall make positive efforts to assure that small businesses and minority- and women-owned business enterprises (M/WBEs) are utilized when possible as sources of supplies, equipment, construction and services. If any subcontracts are to be let, Contractor shall: (1) include qualified small businesses and M/WBEs on solicitation lists; (2) ensure that they are solicited whenever they are potential sources; (3) when economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small business and M/WBE participation; (4) where the requirement permits, establish delivery schedules which will encourage participation by small businesses and M/WBEs; and (5) use the services and assistance of the New York State Department of Economic Development [(518) 292-5100 or website [www.empire.state.ny.us](http://www.empire.state.ny.us)], the US Small Business Administration, the Office of Minority Business Enterprise of the US Department of Commerce, and the US Community Services Administration, as appropriate.

## 21. SUSPENSION OF WORK

The State reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State. In the event of such suspension, the Contractor will be given a formal written notice of such suspension. Examples of the reasons for such suspension include, but are not limited to, a budget freeze on State spending or declaration of emergency. Upon issuance of such notice, the Contractor shall comply with the suspension order. The Contractor shall be paid for services performed prior to suspension in accordance with the Contract. Such suspension will be lifted upon written notice to the Contractor.

## 22. TERMINATION

- a. **For Convenience.** By written notice, this Contract may be terminated, at any time, by (i) the State for convenience upon 30 days' written notice, without penalty or other early termination charges due or (ii) written mutual agreement of the parties. If the Contract is terminated pursuant to this paragraph, the State shall remain liable for all accrued but unpaid charges incurred through the date of the termination.
- b. **For Cause.** For a material breach that remains uncured for more than 30 days from the date of written notice to the Contractor, the Contract may be terminated by the State, at the Contractor's expense, where the Contractor becomes unable or incapable of performing or meeting any requirements or qualifications

set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible or for any of the other reasons stated in this section, with the exception of termination for convenience. Such termination shall be upon written notice to the Contractor. In such event, the State may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

- c. **For Suspension or Delisting of Contractor's Securities.** If the Contractor's securities are suspended or delisted by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, as applicable, if the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Contract or exercise such other remedies as shall be available under the Contract, at law and/or equity.
- d. **For Vendor Responsibility Related Findings.** The OPWDD may, at its sole discretion, terminate the Contract if it finds, at any time during the term of the Contract, that the Contractor is non-responsible or that any information provided in the Vendor Responsibility Questionnaire submitted with the Contractor's bid was materially false or incomplete, or if the Contractor fails to comply timely or truthfully with the OPWDD's request to update its Vendor Responsibility Questionnaire.
- e. **Mitigation of Costs.** The Contractor shall not undertake any additional or new contractual obligations on or after the receipt of notice of termination without the prior written approval of the State. On or after the receipt of a notice of termination and during the termination notice period, as applicable, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State. Upon termination of the Contract, there shall be a reconciliation based upon the services provided by the Contractor and payments made by the State. The Contractor shall refund to the State any overpayments made by the State pursuant to the Contract.
- f. **Termination Pursuant to the Procurement Lobbying Law.** The OPWDD reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law (STF) §139-k was intentionally false or intentionally incomplete. Upon such finding, the OPWDD may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Contract. The Contractor's completed and signed Procurement Lobbying Law Certification of Compliance (Attachment 4) is incorporated into this Contract.

## 23. DEFAULT

- a. If either party breaches a material provision of this Contract, which breach remains uncured for a period of 30 days after written notice thereof from the other party specifying the breach (or if such breach cannot be completely cured within the 30-day period, such longer period of time approved by the non-breaching party, provided that the breaching party proceeds with reasonable diligence to completely cure the breach), or if the Contractor shall cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or shall avail itself of or become subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, then and in any such event, the other party may, at its option, terminate this Contract upon 10 days' written notice and exercise such other remedies as shall be available under this Contract, at law and/or equity.
- b. No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power, or remedy or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.
- c. If, due to default that remains uncured for the period provided herein, a third party shall commence to perform the Contractor's obligations under this Contract, the State shall thereafter be released from all obligations to the Contractor hereunder, including any obligation to make payment to the Contractor;

provided, however, that the State shall continue to be obliged to pay for any and all Services provided prior to any such date, and if any lump-sum payment has been made, the State shall be entitled to a pro-rata refund of such payment.

## **24. TRANSITION**

The State may require the Contractor to provide uninterrupted services after Contract termination/expiration ("Transition Services") as the State deems reasonable and necessary for the State to comply with all legal requirements for establishing a new contract and transitioning to a replacement the Contractor in accordance with the terms specified herein.

- a. **Transition Period.** The State shall determine the transition period in consultation with the Contractor and shall notify the Contractor in writing. The State reserves the right to amend the transition period subsequently, upon 30 days' advance written notice to the Contractor.
- b. **No Interruption in Service.** At all times during the transition period, and unless directed otherwise in writing by the State, the Contractor shall continue its contractual obligations set forth in the Contract until the services provided under the contract have been transitioned to a successor contractor, the State, or a third party designated by the State. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph, notwithstanding the issuance of a termination for cause or convenience by the State.
- c. **Transition Plan.** Within 15 days of receipt of a notice of termination, or three months prior to the end of the term of the Contract, whichever event occurs first, the Contractor shall submit to the State, for the State's review and approval, a detailed written plan for transition (Transition Plan) that outlines, at a minimum, the tasks, milestones, and deliverables associated with a smooth transition of services and corresponding timeline.
- d. **Contractor Transition Services.** Transition Services shall include the performance of the Contractor's responsibilities, as outlined in the Contract, and the transferring of those responsibilities to a successor contractor, the State, or a third party designated by the State in accordance with the Transition Plan agreed upon by the Parties. The Contractor shall maintain the same level of service during the transition period as is set forth in the Contract until specific tasks or services are completely transitioned to or assumed by a successor contractor, the State, or a third party designated by the State.
- e. **Compensation for Transition Services.** The Contractor shall be reimbursed for Transition Services performed at the rates set forth in the Contract that are in effect at the beginning of the transition period.
- f. **Cooperation.** The Contractor shall cooperate with the State and agents working on behalf of the state (e.g., consultants) to facilitate a smooth and orderly transition. Periodic project review meetings shall be held with representatives of the Contractor, a successor contractor, the State, or a third party designated by the State.

## **25. ADDITIONAL TECHNOLOGY PROVISIONS**

- a. **Data** - Any information, Analytic Derivatives (the outcome from datamining or other aggregated data analysis techniques), formula, algorithms, or other content that the OPWDD may provide to the Contractor pursuant to this Contract. Data includes, but is not limited to, any of the foregoing that the OPWDD and/or Contractor (i) uploads to the Cloud Service, and/or (ii) creates and/or modifies using the Cloud Service.
- b. **Data Use Agreement** - A data use agreement (DUA) is an agreement that is required under the Privacy Rule and must be entered into before there is any use or disclosure of a limited data set to an outside institution or party.
- c. **Permitted License Transfers.** Should the State's business operations be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies,

as applicable (“permitted license transfers”). The State may make such permitted license transfers without the need to secure the approval of the Contractor but must give thirty (30) days prior written notice to the Contractor of such transfer. There shall be no additional license or other transfer fees due the Contractor, provided that: (i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to licensed capacity. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the new site, and a logical or physical partition or other means of restricting use is not available, the fees due the Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

- d. **Ownership of and Title to Contract Deliverables.** The Contractor acknowledges that it is commissioned by the State to perform the services detailed in this Contract which may include the development of intellectual property by the Contractor, its subcontractors, partners, employees or agents for the State (“Custom Products”). Unless otherwise specified in writing in this Contract, upon the creation of such Custom Products, the Contractor hereby conveys, assigns and transfers to the State the sole and exclusive rights, title and interest in the Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through the Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed in performing services under the Contract in the course of the Contractor’s business. The State may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of taking exclusive ownership and title to such Products. In such case, the State shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in this Contract.
- e. **Ownership of Material.** Ownership of all data, documentary material and reports originated and prepared exclusively for the OPWDD pursuant to any Contract resulting from this RFP shall belong to the OPWDD. The Contractor agrees that, except where noted, all materials, documents, products, reports, data and other information, whether finished, unfinished, or draft developed, gathered or compiled under this agreement by consultant are the sole exclusive property of the OPWDD and that they shall not be used by the consultant or any other person or destroyed without express written permission of the OPWDD.
- f. **Data Ownership.** All State data is owned exclusively by the State and will remain the property of the State. The Contractor is permitted to use data solely for the purposes set forth in this Contract, and for no other purpose. Contractor is prohibited from data mining, cross tabulating, monitoring OPWDD’s data usage and/or access, or performing any other data analytics other than those agreed to within the Contract. At no time shall the Contractor access, use, or disclose any confidential information (including personal, financial, health, or criminal history record information or other sensitive criminal justice information) for any other purpose. The Contractor is strictly prohibited from releasing or using data or information for any purposes other than those purposes specifically authorized by the State. The Contractor agrees that State data shall not be distributed, used, repurposed, transmitted, exchanged or shared across other applications, environments, or business units of the Contractor or otherwise passed to other contractors,

agents, subcontractors or any other interested parties, except as expressly and specifically agreed to in writing by the State.

- g. **Data Protection and Transmission.** The Contractor shall use appropriate means to preserve and protect State data. This includes but is not limited to use of stable storage media, regular data backups and archiving, password protection of volumes, and data encryption in rest and in transit and where specifically allowed by OPWDD written agreement, on portable devices (drives, laptops). The Contractor must, in accordance with applicable law, regulations, or established requirements and the instructions of the State, maintain such data for the time period required by applicable law, exercise due care for the protection of data, and maintain appropriate and necessary data integrity safeguards against the deletion or alteration of such data. In the event that any data is lost or destroyed because of any act or omission of the Contractor or any non-compliance with the obligations of this Contract, then the Contractor shall, at its own expense, use its best efforts in accordance with industry standards to reconstruct such data as soon as feasible. In such event, the Contractor shall reimburse the State for any costs incurred by the State in correcting, recreating, restoring or reprocessing such data or in providing assistance therewith.

The Contractor agrees that any and all State data will be stored, processed and maintained solely on designated target devices, and that no State data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that device or storage medium is a necessary and approved component of the authorized business processes covered in the contract/agreement and or any addendum thereof, or the Contractor's designated backup and recovery processes, and is encrypted in accordance with all current federal and State statutes, regulations and requirements, to include requirements for data defined as confidential, financial information, Personal Private and Sensitive Information (PPSI), Personally Identifying Information (PII) or Protected Health Information (PHI) by statute or regulations. The Contractor shall encrypt data at rest, on file storage, database storage, or on back-up media, and in transit in accordance with state and federal law, rules, regulations, and requirements. The solution shall provide the ability to encrypt data in motion and at rest in compliance with state or federal law. The Contractor shall use secure means (HTTPS) for all electronic transmission or exchange of system, user and application data with the State. In the event of a conflict between the terms of this section (25.g) of this RFP and Appendix D: HIPAA Business Associate Agreement, the HIPAA Business Associate Agreement shall take precedence.

- h. **Data Return and/or Destruction.** At the expiration or termination of the Contract, at the State's option, the Contractor must provide ITS with a copy of all State data, including metadata and attachments, in a mutually agreed upon, commercially standard format and give the State continued access to State data for no less than ninety (90) days beyond the expiration or termination of the Contract. Contractor cannot charge for the transfer of data unless the charges are provided for in response to solicitation.

Thereafter, except for data required to be maintained by law or this Contract, Contractor shall destroy State data from its systems and wipe all its data storage devices to eliminate any and all State data from the Contractor's systems. The sanitization process must be in compliance NYS Security Policy NYS-S13-003, <https://www.its.ny.gov/document/sanitizationsecure-disposal-standard>, and, where required, CJIS sanitization and disposal standards. If immediate purging of all data storage components is not possible, the Contractor will certify that any data remaining in any storage component will be safeguarded to prevent unauthorized disclosures. The Contractor must then certify to ITS/OPWDD, in writing, that it has complied with the provisions of this paragraph. The State may withhold payment to the Contractor if State data is not released to ITS in accordance with the preceding sections.

**i. Secure System Development Lifecycle and Specification**

Unless otherwise agreed to by the OPWDD in writing, the contractor's current version of the solution must function as specified in the associated SoW in an environment comprised solely of components including, but not limited to operating system and database platform versions which are in an active support phase (e.g., no requirement to run on End of Life software, such as Windows 7, etc.).

Unless otherwise agreed to by the OPWDD in writing, the Contractor shall represent the below practices by providing the documentation of Contractor's adherence to the below policies available in a public website or secure portal that shall be provided to OPWDD upon request.

**2) Vulnerability Management**

- a. The contractor shall make commercially reasonable efforts to ensure that components including but not limited to third party libraries, components and APIs are maintained at their most recent, stable version within the released application made available to the AU.
- b. The contractor shall follow a secure coding framework appropriate to the nature of its software components. For example, web application development teams may follow the Open Web Application Security Project's Secure Coding Practices
- c. The contractor shall document and execute a remediation plan for any vulnerability identified through dynamic or static analysis, vulnerability scans or penetration tests, where the vulnerability has a CVSS severity of 7.0 or higher
- d. The contractor shall establish processes for monitoring and acting upon vulnerability notices published regarding components of the software development environment as well as components used in the solution provided to the AU
- e. The contractor shall maintain publicly available mechanisms for receiving reports of vulnerabilities identified by its customers, security researchers and similar entities.

**3) Application Lifecycle Management**

- a. The contractor shall ensure that any open source licenses which apply to components used in the solution confer no obligations upon the AU, or that in the event of such obligation, the AU is aware of and agrees to same.
- b. All applications released by contractor to the AU shall be signed by a publicly trusted code signing certificate so that the AU may verify the authenticity and integrity of the release. This code signing certificate shall be rotated on at least an annual basis.
- c. The contractor shall ensure that all implementation services and / or guides comprehensively address security hardening for the solution. Such hardening shall include, but not be limited to, the disabling of unnecessary features based on the SoW and the implementation of a "least privilege" access model for all users and service accounts.
- d. The contractor shall implement processes to ensure that all changes to the solution:
  - i. Are made at the direction of its product managers or equivalent role
  - ii. Are documented in a work management / issue tracking application
  - iii. Maintain evidence of security checks and approvals
  - iv. Include documented functional requirements and non-functional security requirements
  - v. Include a plan for notifying customers, including the AU, of any substantive changes upon release

- e. The contractor shall provide ample notice, and in no case less than six months, should the solution version used by the AU reach End of Life, such that it will no longer receive security updates to address vulnerabilities.

#### 4) SECURITY

##### a. Security Incidents

The OPWDD and the Contractor must, in writing, determine a Security Incident Notification Policy prior to the finalization of the OPWDD Agreement. If no such agreement is in place, then the default agreement shall be notification of all Security Incidents that may have a direct impact on the AU by phone immediately upon detection to the OPWDD representative.

For AUs defined as “State Agency” or “State Government”, all notifications will be followed with a notification to the NYS Cyber Command Center by email to [cycom@its.ny.gov](mailto:cycom@its.ny.gov), to the NYS Division of Homeland Security and Emergency Services (DHSES) Cyber Incident Response Team (CIRT) by email to [cirt@dhSES.ny.gov](mailto:cirt@dhSES.ny.gov).

If requested in the OPWDD agreement and agreed to by the Contractor, a written preliminary incident analysis report must be provided to AU within 72 hours of discovery. Contractor representative must be available by phone and email for discussions with the NYS Cyber Command Center/DHSES CIRT and AU representative throughout incident response activity and must provide status updates at mutually agreed upon cadences. A written final incident analysis report, including a detailed technical section including root cause of incident, timeline, scope, impact and corrective actions taken must be delivered to AU at the conclusion of incident response.

##### b. DATA BREACH - REQUIRED CONTRACTOR ACTIONS

Unless otherwise provided by law, in the event of a Data Breach, the Contractor shall:

- i. notify the NYS Cyber Command Center, DHSES CIRT, and any potentially affected OPWDD’s representative, by telephone as soon as possible from the time the Contractor confirms Data Breach. An OPWDD may specify a maximum notification time in their RFQ.;
- ii. consult with and receive authorization from the OPWDD as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by the OPWDD;
- iii. coordinate all communication regarding the Data Breach with the NYS Cyber Command Center, DHSES CIRT, and OPWDD (including possible communications with third parties);
- iv. cooperate with the OPWDD, NYS Cyber Command Center, DHSES CIRT, and any Contractor working on behalf of the OPWDD or the NYS Cyber Command Center in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and
- v. promptly take commercially reasonable steps to mitigate the effects and minimize any damage resulting from the Security Event Contractor shall provide Written notice to the OPWDD as to all such corrective actions taken by the Contractor to remedy the Data Breach. Unless otherwise agreed to in the OPWDD Agreement, if Contractor is unable to complete the corrective action within the required timeframe, the remedies provided in Appendix B, Section 28, shall apply and (i) the OPWDD may contract with a third party to provide the required services until corrective actions and services resume in a manner

acceptable to the OPWDD, or until the OPWDD has completed a new procurement for a replacement service system; (ii) and the Contractor will be responsible for the reasonable cost of these services during this period.

Nothing herein shall in any way (a) impair the authority of the Office of the Attorney General or other investigative or law enforcement entity to bring an action against Contractor to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Contractor's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

c. Location of Data; CONUS

- i. All Data is to be located within the Continental United States (CONUS).
- ii. When the Contractor is responsible for managing the Data and shall meet the following requirements:
  1. All Data shall remain in the Continental United States (CONUS).
  2. Any Data stored, or acted upon, shall be solely located in Data Centers within CONUS.
  3. Any services which directly or indirectly access Data shall be performed only from locations within CONUS.
  4. All Data in transit shall remain in CONUS and shall be encrypted in accordance with Section 25.g.
  5. All helpdesk, online and support services which may access Data shall be performed only from locations within CONUS.
  6. No Follow the Sun support shall be allowed to access Data directly or indirectly from locations outside CONUS.
- iii. When the OPWDD is responsible for managing the Data, the Contractor shall provide the OPWDD with the capability and the means or tools to meet the following requirements:
  1. All Data shall remain in the Continental United States (CONUS).
  2. Any Data stored, or acted upon, shall be solely located in Data Centers within CONUS.
  3. Any services which directly or indirectly access Data shall be performed only from locations within CONUS.
  4. All Data in transit shall remain in CONUS and shall be encrypted in accordance with Section 25.g.
  5. All helpdesk, online and support services which may access Data shall be performed only from locations within CONUS.
  6. No Follow the Sun support shall be allowed to access Data directly or indirectly from locations outside CONUS.
- iv. Contractor may not store, act upon, or access Data outside of the Continental United States (OCONUS) and may not perform support services that may access Data from OCONUS.
- v. Notwithstanding the foregoing, all services must be performed within CONUS and may not be authorized to be performed from OCONUS.

d. Security Reports

Contractor must log in accordance with NIST 800-92, or its successor. Upon request, the Contractor must provide the OPWDD with security logs and reports (such as SOC2 Type 2, CAIQ, and ISO27001) to allow the OPWDD to make an informed decision about the Contractor's security controls and their effectiveness.

Contractor shall cooperate with all reasonable OPWDD requests for a Written description of Contractor's physical/virtual security and/or internal control processes. The OPWDD shall have the right to reject any Contractor's RFQ response or terminate an OPWDD Agreement when such a request has been denied.

e. Reserved.

f. Reserved.

g. REQUESTS FOR DATA BY THIRD PARTIES

Unless prohibited by law, Contractor shall notify the OPWDD in writing within 24 hours of any request for Data (including requestor, nature of Data requested and timeframe of response) by a person or entity other than the OPWDD, and the Contractor shall secure Written acknowledgement of such notification from the OPWDD before responding to the request for Data.

Unless compelled by law, the Contractor shall not release Data without the OPWDD's prior Written approval.

h. SECURITY POLICIES

Contractor must maintain records documenting adherence to the following security policies and must provide such records to an OPWDD, or to OGS/ITS/DHSES, upon request, through a public website or secure portal.

Policies that govern software development practices commensurate with the risk of the intended use of each software application

- Such policies shall define documented security roles for the software development team
- On no less than an annual basis, the contractor shall conduct a comprehensive review of software development policies and make changes where indicated to adequately address new or changed risk

The contractor shall deliver remote and /or on premises support only with approval of AU and with the option for AU to supervise / observe the support activity

At no time during remote and /or on premises support, or any other time, shall contractor transfer AU's data from AU's on-premise installation of the software application to a remote location without the express written permission of the AU

The contractor shall 1) utilize uniquely assigned credentials for each of its workforce members to be used in supporting the AU's software application or 2) notify the AU within 24 hours of the departure of a contractor's workforce member who had knowledge of credentials used to support the AU's software application.

Upon request and with reasonable notice, the contractor shall provide the AU with a list of its workforce members with knowledge of credentials used to access the AU's software application

The contractor shall make commercially reasonable efforts to ensure that components including but not limited to third party libraries, components and APIs are maintained at their most recent, stable version within the released application made available to the AU.

The contractor shall follow a secure coding framework appropriate to the nature of its software application. For example, web application development teams may follow the Open Web Application Security Project's Secure Coding Practices

The contractor shall document and execute a remediation plan for any vulnerability identified through dynamic or static analysis, vulnerability scans or penetration tests, where the vulnerability has a CVSS severity of 4.0 or higher

The contractor shall establish processes for monitoring and acting upon vulnerability notices published regarding components of the software development environment as well as components used in the software application provided to the AU

The contractor shall maintain publicly available mechanisms for receiving reports of vulnerabilities identified by its customers, security researchers and similar entities.

The contractor shall ensure that any open-source licenses which apply to components used in the software application confer no obligations upon the AU, or that in the event of such obligation, the AU is aware of and agrees to same.

All applications released by contractor to the AU shall be signed by a publicly trusted code signing certificate so that the AU may verify the authenticity and integrity of the release. This code signing certificate shall be rotated on at least an annual basis.

The contractor shall ensure that all implementation guides and training comprehensively address security hardening for the application. Such hardening shall include, but not be limited to, the disabling of unnecessary features based on the SoW and the implementation of a "least privilege" access model for all users and service accounts.

The contractor shall implement processes to ensure that all changes to the software application:

- Are made at the direction of its product managers or equivalent role
- Are documented in a work management / issue tracking application
- Maintain evidence of security checks and approvals
- Include documented functional requirements and non-functional security requirements
- Include a plan for notifying customers, including the AU, of any substantive changes upon release

In no case shall the contractor knowingly release to the AU an application which contains a vulnerability with a CVSS severity of 7.0 or higher, without the direct written permission of the AU.

#### i. SECURE DATA DISPOSAL

After 60 calendar days from expiration or termination of an OPWDD Agreement, or at a time mutually agreed upon by the OPWDD and the Contractor, the Contractor shall destroy Data in all of its forms, including all back-ups. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) 800-88, or its successor, as designated by the OPWDD, as applicable. If requested by the OPWDD, certificates of destruction, in a form acceptable to the OPWDD, shall be provided by the Contractor to the OPWDD.

- AUTHENTICATION TOKENS

If included in an RFQ, the OPWDD Agreement may require authentication tokens for all systems in accordance with NIST 800-63B Authentication and Lifecycle Management, or its successor.

j. CONTRACTOR PORTABLE DEVICES

Contractor shall not place Data on any portable Device unless expressly authorized by the OPWDD in writing.

OPWDD is subject to NYS security policies/standards, the Data, and/or the portable device containing the Data, shall be destroyed in accordance with applicable destruction policies (NYS S13-003 Sanitization/Secure Disposal and NYS-S14-003 Information Security Controls, or successor) when the Contractor is no longer contractually required to store the Data. For all other users, NIST 800-88 Media Sanitization guidelines must be followed unless specifically modified within the OPWDD Agreement.

k. SECURITY, CONFIDENTIALITY AND PRIVACY POLICIES AND LAWS

The Contractor shall comply with all applicable Federal, State, and OPWDD policies regarding compliance with various security, confidentiality and privacy laws, rules, regulations, and policies as set forth in the RFQ and agreed to by the OPWDD and Contractor within the OPWDD Agreement. For additional information see Appendix D – Primary Security and Privacy Mandates. At minimum, Contractor will comply with a NIST-aligned framework that will assure appropriate measures are in place to protect the confidentiality, integrity and availability of data.

As part of such compliance, Contractor shall execute written confidentiality/non-disclosure agreements as requested by the State or an OPWDD.

l. BACKGROUND CHECKS

The OPWDD may require within the RFQ that the Contractor conduct background checks on Contractor staff with access to the data or premises, and/or on Contractor staff involved with the development of OPWDD's custom solution, at no charge to the OPWDD.

As required by the OPWDD, contractors must comply with the security clearance and background check process as set forth in the RFQ at no cost to the OPWDD. For OPWDDs with direct or indirect access to the State data center, this must be a requirement of the RFQ.

m. POTENTIAL OPWDD REQUIREMENTS

OPWDD may require any of the below:

- i. The Contractor or a qualified third party shall conduct vulnerability scanning against each proposed release of software.
- ii. The Contractor shall, on at least an annual basis and upon substantive change in software features or functionality, engage a qualified third party to perform a penetration test against the solution.
- iii. The Contractor shall, upon request and with reasonable notice of the AU, provide the Executive Summary, including number of vulnerabilities and associated severity, from its most recent vulnerability scan and penetration test performed against the software application and a remediation plan, including timeline.
- iv. The Contractor shall notify the AU via mutually agreed methods and within no more than 24 hours of any vulnerability identified within its released code with a CVSS severity of 4.0 or higher

- v. The Contractor shall implement hashing within its artifact repositories along with automated controls to ensure that releases are built only from approved artifacts. Hashing must be in accordance with NIST FIPS 180-4 Secure Hash Standard.
- vi. For software applications deemed mission critical by the AU, the Contractor shall maintain ISO27001 (27034), ISO9001 (90003) or BSA Framework for Secure Software compliance, or compliance with a similar framework mutually agreed with the OPWDD.
- vii. The Contractor shall establish a core set of security requirements to be used in the acquisition of commercial and open-source components for the software development environment and software applications developed therein.
- viii. The Contractor shall develop code within an Integrated Development Environment application with built in error / security checking enabled.
- ix. The Contractor shall store all source and compiled code in code repositories with access limited to authorized personnel based on role.
- x. The Contractor shall maintain separate environments for development and testing
- xi. The Contractor shall perform adequate testing on software applications used by the AU including, but not limited to security testing, unit testing, integration testing, regression testing, load testing, and user acceptance testing.
- xii. The Contractor shall not perform application testing with un-sanitized customer data without the express written permission of the AU.
- xiii. The Contractor shall implement dynamic and static analysis in the software development environment to identify vulnerabilities.
- xiv. The Contractor shall implement processes to identify and respond to any unauthorized changes in the software development environment, including but not limited to source code and artifact repositories, access management controls, etc.
- xv. The Contractor shall monitor the support status of all components of the software development environment, maintaining them at a supported level.
- xvi. The Contractor shall implement access management controls such that all access to the software development environment by the workforce is made via uniquely assigned accounts.
- xvii. The Contractor shall aggregate, protect and analyze all logs generated by systems involved in the software development process.
- xviii. The Contractor shall implement multifactor authentication for sensitive functions within the software development environment, as well as for all access to the software development environment from outside the Contractor organization.
- xix. The Contractor shall adequately protect the development environment from the rest of its business environment through strategies such as network-layer segmentation, and the use of endpoint protection software and host-based firewalls on all development endpoints.
- xx. The Contractor shall utilize one or both of the following methods to ensure that no single workforce member can implement an unauthorized change to the software application:
  - Technically enforced separation of duties such that workforce members who write code may not compile code into a releasable software application
  - Automation maintained within the software development environment which ensures that peer security code reviews are performed prior to commits to a source code repository, along with supporting controls to ensure that releases are built only from approved repositories that are not accessible to development personnel
- xxi. The Contractor shall provide a "Software Bill of Materials" to the OPWDD detailing all third-party components included in the software. This SBOM shall be provided upon initial contracting and any material change to the components of the software thereafter.

Client installations of software intended for end users (i.e., not IT administrative applications), must deliver the functionality as specified in the associated SoW solely with “user-level” permissions, and not require “root-level” or “administrator-level” permissions for the end user.

## **26. FORCE MAJEURE**

In the event that either Party is unable to perform any of its obligations under the Contract because of natural disaster, any act of God, war, civil disturbance, court order, labor dispute, or any other acts beyond the reasonable control of either Party (hereinafter referred to as a "Force Majeure Event"), the Party that has been so affected shall immediately give notice to the other Party and shall exercise every commercially reasonable effort to resume performance, and an extension of the time for performance shall be granted for a period to be agreed to in writing by the Parties. Any delay in performance by either Party resulting from a Force Majeure Event shall not be considered a breach or default under the Contract.

## **27. DISPUTE RESOLUTION**

- a. In the event that either party has a dispute arising out of the other's performance of the Contract, either party shall notify the other in writing. The other party shall then make all good-faith efforts to solve the problem or settle the dispute amicably, including meeting with the other party's designated representatives to attempt diligently to reach a satisfactory result. If the parties are unable to resolve the dispute or reach a satisfactory result within 10 business days of the original written dispute notification (the "Notification Date"), then the issue shall be presented to the OPWDD Deputy Commissioner of the Division of Enterprise Services, or his or her designee, who shall serve as the arbiter and issue the OPWDD's final decision within 15 business days of the Notification Date. Nothing herein shall limit either party's ability to pursue all available legal and equitable remedies. However, unless a party reasonably believes that immediate relief is required in order to avoid irreparable harm, the parties agree to defer seeking either legal or equitable relief in a court of competent jurisdiction until the OPWDD's final decision has been issued.

The Deputy Commissioner shall have the power to appoint or change his or her designee or otherwise alter the rules of the procedure upon written notice to the Contractor.

Pending the conclusion of any dispute or disagreement by whatever procedure, the construction placed upon the Contract by the State shall govern operation thereunder, and the Contractor and the OPWDD shall continue to perform under the Contract, unless the OPWDD has suspended or terminated the Contract in accordance with the applicable terms of the Contract.

The Contractor shall be required to bring all legal proceedings relating to this Contract against the OPWDD or the State of New York in the Supreme Court of the State of New York in the County of Albany, or the New York State Court of Claims.

Nothing in this paragraph shall diminish the State's right to suspend or terminate the Contract in accordance with applicable clauses contained within this Contract.

- b. In the event of a conflict between the Contractor and other consultants or contractors of the OPWDD, the Contractor shall submit to the OPWDD a timely written explanation of the details of the conflict, including such pertinent facts as may provide the OPWDD with a firm basis for understanding the nature of the conflict. The Contractor agrees to proceed in a good-faith effort to avoid disputes and to resolve disputes with other contractors or subcontractors of the OPWDD as amicably as possible.

## **28. GENERAL PROVISION AS TO REMEDIES**

- a. The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with, or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall

exhaust or impair the right or remedy, or constitute a waiver of or acquiescence to, an event otherwise constituting a breach or default under the Contract.

- b. In addition to any other remedies available to the State under the Contract and State and federal law for the Contractor's default, the State may choose to exercise some or all of the following:
- Suspend, in whole or in part, payments due to the Contractor under this Contract.
  - Pursue equitable remedies to compel the Contractor to perform.
  - Apply Service Credits against amounts due and owing by the State under the Contract.
  - Require the Contractor to cure deficient performance or perform the requirements of this Contract at no charge to the State.

## **29. INSURANCE**

The Contractor must comply with the insurance provisions set forth in Appendix E, which is attached hereto and incorporated into this Contract.

## **30. TAXES**

- a. The OPWDD represents that purchases on behalf of the State of New York are not subject to any state or local sales or use taxes, or to federal excise taxes.
- b. The Contractor remains liable and solely responsible, without exemption for social security, unemployment insurance, workers' compensation, and other taxes and obligations to which the Contractor may be subject by law.

## **31. OUTSTANDING TAX LIABILITIES**

The Contractor warrants that there are no outstanding tax liabilities against the Contractor in favor of the State of New York, or in the event that such liabilities exist, a payment schedule has been arranged for their speedy satisfaction before contract execution.

## **32. SECURITY, NON-DISCLOSURE/CONFIDENTIALITY, PRESS RELEASES**

Subject to the cure period set forth in Section 23(a) of this Contract, the Contract may be terminated by the State for cause for a material breach of this Section by the Contractor.

### **a. Security Procedures**

The Contractor shall comply fully with all security procedures and policies of the State, including but not limited to any required fingerprinting and background check procedures, which are communicated to the Contractor by the State during the performance of Services under the Contract. The Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its officers, agents, employees, and subcontractors, if any, of such security procedures or policies resulting from any criminal acts committed by such officers, agents, employees, and subcontractors, if any, while providing Services under the Contract.

### **b. Nondisclosure & Confidentiality**

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors, if any, shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors, if any, have access. This requirement shall survive termination of the Contract. For purposes of the Contract, all State information of which Contractor, its officers, agents, employees, and subcontractors, if any, become aware during the course of performing services for the State, shall be deemed to be confidential information (oral, visual or written).

Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered

**Confidential Information:**

- Information that is previously rightfully known to the receiving party without restriction on disclosure.
- Information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain.
- Information that is independently developed by the Contractor without use of Confidential Information of the State.

The Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such confidential information in the event such disclosure is inconsistent with the requirements of this Section.

The Contractor employees and subcontractors shall be required to sign Confidentiality and Non-Disclosure Agreements, either before or upon arrival at the work site, or prior to providing services under the Contract.

State employees and subcontractors shall also be required to sign Confidentiality and Non-Disclosure Agreements before receiving access to the Contractor's confidential information. All intellectual property of the Contractor, including without limitation, the software provided by the Contractor as a service, shall be deemed to be confidential information of the Contractor.

**c. Press Releases**

The Contractor agrees that no brochure, news/media/press release, public announcement, memorandum, or other information of any kind regarding the Contract shall be disseminated in any way to the public, nor shall any presentation be given regarding the Contract without the prior written approval of the OPWDD, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Contract and answer any questions relating thereto to any State or federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

**d. Federal or State Requirements**

The Contractor will comply with federal and State law and regulations regarding personal, private, and sensitive State Data, including, but not limited to HIPAA and HI-TECH (see Section 47, below), 45 CFR Part 160 and Subparts A and E of Part 164, 10 NYCRR Part 63, Mental Hygiene Law §§33.13 and 33.16.

In the event it becomes necessary for the Contractor to receive Confidential Information which federal or State statute or regulation prohibits from disclosure, the Contractor hereby agrees to return or destroy all such Confidential Information that has been received from the State when the purpose that necessitated its receipt by the Contractor has been completed. In addition, the Contractor agrees not to retain after termination of the Contract any Confidential Information which federal or State statute or regulation prohibits from disclosure.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, the Contractor agrees to extend the protections of the Contract for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information. If Contractor elects to destroy Confidential Information, it shall use reasonable efforts to achieve the same and notify the State accordingly. The Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information, which federal or State statute or regulation prohibits from disclosure.

The Contractor agrees that it shall immediately report to the State the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information of any New York State Agency information directly to that New York State Agency. The State may terminate the Contract if it determines that the Contractor has violated a material term of this section. The terms of this section shall apply equally to the Contractor, its agents, and subcontractors, if any. The Contractor agrees that all subcontractors, if any, and agents shall be made aware of and shall agree to the terms of this Section.

**e. Off Shore Restrictions**

Confidential Information accessed by or provided to the Contractor during the course of performing services for the State must not be stored or accessed outside of the continental United States.

**f. Criminal Justice Information Services (CJIS)**

If the Contractor, its employees, agents, or subcontractors shall have access to criminal justice/forensic information (including criminal history record information or other sensitive criminal justice information), as defined by the Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Security Policy (accessed through the link below), on NYS systems or media, the Contractor, its employees, agents, or subcontractors must comply with the requirements of the CJIS Security Policy available at:

<https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>

**33. PUBLIC INFORMATION AND FREEDOM OF INFORMATION LAW (FOIL)**

Disclosure of information related to this procurement and the resulting Contract shall be permitted, consistent with the laws of the State of New York and specifically FOIL. The OPWDD shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this procurement that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as such by the Contractor upon submission, in accordance with provisions of this Contract. If the Contractor intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of: (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor; or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to §87(2) of FOIL. Acceptance of the identified information by the OPWDD does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the OPWDD.

**34. LEGAL REQUESTS AND RELEASE OF STATE DATA TO THIRD PARTIES PROHIBITED**

Except otherwise required by law, the Contractor shall not disclose State data to a third party. Except where expressly prohibited by law, the Contractor shall promptly notify the State of any subpoena, warrant, judicial, administrative, or arbitral order of an executive or administrative agency or other governmental authority of competent jurisdiction (a "Demand") that it receives and which relates to or requires production of the State information or data the Contractor is processing or storing on the State's behalf. If the Contractor is required to produce State information or data in response to a Demand, the Contractor will provide the State with the information or data in its possession that it plans to produce in response to the Demand prior to production of such State information or data. Except as otherwise required by law, the Contractor shall provide the State reasonable time to assert its rights with respect to the withholding of such information or Data from production. If the State is required to produce State information or data in response to a Demand, the Contractor will, at the State's request and unless expressly prohibited by law, produce to the State any State information or data in its possession that may be responsive to the Demand and shall provide assistance as is reasonably required for the State to respond to the Demand in a timely manner. The State acknowledges that the Contractor has no responsibility to interact directly with the entity making the Demand. The parties agree that the State's execution of this agreement does not constitute consent to the release or production of State data or information.

**35. MWBE AND EEO REQUIREMENTS**

Portions of the MWBE and EEO provisions of Appendix A Supplement may not apply where the Contract goals for MWBE participation are set at 0%. See Exhibit 5: MWBE Compliance Memo for MWBE solicitation requirements.

### **36. ETHICS COMPLIANCE**

The Contractor, its officers, employees, agents, and subcontractors (if any) shall comply with the requirements of Public Officers Law §73 and §74, and other State codes, rules, and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with these provisions may result in termination of the Contract and/or other civil or criminal proceedings as required by law.

Contractors, consultants, vendors, and subcontractors may hire former State Agency employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency may neither appear nor practice before the State Agency, nor receive compensation for services rendered on a matter before the State Agency, for a period of two years following their separation from State Agency service. In addition, former State Agency employees are subject to a “lifetime bar” from appearing before the State Agency or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency.

The Contractor and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics or its predecessors (collectively, the “Ethics Requirements”). The Contractor certifies that all of its employees, and those of its subcontractors, who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its subcontractors who are former employees of the State who will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide it whatever information the State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any subcontractor, if utilizing such subcontractor for any work performed hereunder would conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract, at any time, if any work performed hereunder conflicts with any of the Ethics Requirements.

### **37. MOST FAVORABLE TERMS AND BEST PRICING**

The Contractor agrees that all fees, pricing, terms, and warranties provided by the Contractor under the Contract are substantially similar to the best equivalent terms being offered by the Contractor to any entity similarly situated to the State for substantially similar services or products. If during the term of the Contract, the Contractor enters into an arrangement with any similarly situated entity for substantially similar services or products, with better pricing or terms that are more favorable, the Contractor hereby agrees to amend the Contract to provide the same to the State.

### **38. TRANSFER OF CONTRACT**

The OPWDD may transfer/assign the Contract to another State Agency or entity, at its sole discretion, by informing the Contractor in writing of such a transfer. The Contractor shall execute any documents required to accomplish the transfer/assignment of the Contract. The Contractor shall comply with any instructions from the OPWDD to accomplish the transfer/assignment of the Contract, at no additional cost to the State.

### **39. SUBCONTRACTORS**

Full responsibility for the delivery of services must be provided by the Contractor under this Contract. The Contractor may not subcontract the services procured under this Contract without the State’s prior written approval. The OPWDD reserves the right to reject any proposed subcontractor or supplier if it determines that the company is not qualified or responsible. All such subcontracting relationships between the Contractor and

its subcontractors to perform services must be memorialized by written agreement.

The Contractor shall include in all agreements with its subcontractors, in such a manner that will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions specifying that:

- The work performed by the subcontractor must be in accordance with the terms and conditions of this Contract
- Nothing contained in such subcontract shall impair the rights of the OPWDD or the State
- The subcontract is subordinate to this Contract with OPWDD and that any and all conflicting provisions of the subcontract will be superseded by the terms of this Contract
- Nothing contained in the subcontract shall create any contractual relationship between the subcontractor and the OPWDD or the State
- The State and the OPWDD shall have the same authority to audit the records of all subcontractors as it does those of the Contractor relating to the performance of Services under the Contract
- The subcontractor shall cooperate with any investigation, audit, litigation, or other inquiry related to the Procurement or the resulting Contract.

The OPWDD reserves the right, at any time during the term of the Contract, to verify that the written subcontract(s) between the Contractor and Subcontractor(s) complies with all of the provisions of this Section and any subcontract provisions contained in this Contract.

If, at any time during the performance under this Contract, total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

#### **40. WAIVER**

No term or provision of the Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No consent by a party to, or waiver of, a breach under the Contract shall constitute consent to, a waiver of, or excuse for any other, different, or subsequent breach. The rights, duties, and remedies set forth in the Contract shall be in addition to, and not in limitation of, rights and obligations otherwise available at law or equity.

#### **41. ACCESSIBILITY**

Any web-based information and applications development, or programming delivered pursuant to the Contract, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications, as such policy may be amended, modified, or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by the Contractor, and the results of such testing must be satisfactory to the OPWDD before web-based information and applications will be considered a qualified deliverable under the Contract or Procurement.

#### **42. COMPLIANCE WITH NYS INFORMATION SECURITY POLICIES AND STANDARDS**

The Contractor, while performing Services under this Contract, shall comply fully with the requirements of the Information Security Breach and Notification Act, and all security procedures and policies of the State including, but not limited to, the following:

- Acceptable Use of Information Technology Resources Policy
- Information Security Policy
- Security Logging Standard

- Information Security Risk Management Standard
- Information Security Controls Standard
- Sanitization/Secure Disposal Standard
- Mobile Device Security Standard
- Remote Access Standard
- Secure System Development Life Cycle Standard
- Secure Configuration Standard
- Secure Coding Standard

ITS Security Policies and Standards may be found at:

<http://www.its.ny.gov/tables/technologypolicyindex.htm/security>

#### **43. RIGHT TO INSPECT**

The State, or contracted entities working on behalf of the State, has the right to review the Contractor's procedures, practices, and controls related to the security of State Data. Upon written request, the Contractor will, immediately or no later than five business days after the request, make available for review policies, procedures, practices, and documentation related to the protection of State Data, including but not limited to that related to information security governance, network security, risk and compliance management. policies and procedures, personnel security background screening/checks and vetting procedures, secure systems/software development protocols, change/release management, testing, quality assurance, vulnerability management, secure disposal/sanitization and documentation. The Contractor may be asked to provide a recent independent audit report on security controls prior to formal awarding of any Contract resulting from this Contract, or at any time during the Contract term.

The State shall have the right to send its officers, employees, or contracted vendors working on behalf of the OPWDD to inspect the Contractor's facilities and operations used to provide Contract services. On the basis of such inspection, the State may require the Contractor to implement corrective measures where the Contractor is found to be noncompliant with Contract provisions.

#### **44. SEVERABILITY**

In the event that one or more of the provisions of the Contract shall, for any reason, be declared unenforceable by a court of competent jurisdiction under the laws or regulations in force, such provision(s) shall have no effect on the validity of the remainder of the Contract, which shall then be construed as if such unenforceable provision(s) was never contained in the Contract.

#### **45. PIGGYBACKING**

The Contractor acknowledges and agrees that, pursuant to State Finance Law §163(10)(e), the New York State Office of General Services may authorize and approve purchases from contracts let by the Contractor to other New York State agencies, the United States Government, or any other state, with the concurrence of the Office of the New York State Comptroller and under appropriate circumstances.

#### **46. EMPLOYEE INFORMATION REQUIRED TO BE REPORTED FOR CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS**

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law relative to maintaining certain information concerning Contract Employees working under State Agency service and consulting contracts. State Agency consultant contracts are defined as "contracts entered into by a state Agency for *analysis, evaluation, research, training, data processing, computer programming, engineering,*

*environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*" ("covered consultant Contract" or "covered consultant services"). The amendments also require that certain Contract Employee information be provided to the state Agency awarding such contracts, OSC, Division of the Budget (DOB), and Department of Civil Service (CS). The effective date of these amendments is June 19, 2006. The requirements will apply to covered contracts awarded on and after such date.

To meet these requirements, the Contractor agrees to complete:

**Form A** - Contractor's Planned Employment Form, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information as part of its bid response.

**Form B** - Contractor's Annual Employment Report. Throughout the term of the Contract, by May 15 of each year, the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant Contract in effect at any time between the preceding April 1 through March 31 fiscal year or for the period of time such Contract was in effect during such prior State fiscal year, Contractor reports the:

1. Total number of employees employed to provide the consultant services, by employment category
2. Total number of hours worked by such employees
3. Total compensation paid to all employees who performed consultant services under such Contract.\*

\*NOTE: The information to be reported is applicable only to those Employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to employees of subcontractors who perform any part of the service Contract or any part of the covered consultant Contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an Employee in a clerical, support, organizational, or other administrative capacity.

The Contractor agrees to report such information simultaneously to CS and OSC as designated below:

**Department of Civil Service**

Alfred E. Smith Office Building

Albany, NY 12239

Attn: Executive Office

Email (preferred): [SubmitformB@cs.ny.gov](mailto:SubmitformB@cs.ny.gov)

**Office of the State Comptroller – Bureau of Contracts**

110 State St., 11th Floor

Albany, NY 12236

Attn: Consultant Reporting

Email (preferred): [CDMOST@osc.ny.gov](mailto:CDMOST@osc.ny.gov)

The Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event that individual Employee names or social security numbers are set forth on a document, the State Agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

Further information is available in the Office of the State Comptroller's Bulletin G-226 regarding the Contractor Consultant Law requirements and report Forms A and B at [https://www.osc.state.ny.us/agencies/contract\\_advisories/cadvisory\\_16.htm](https://www.osc.state.ny.us/agencies/contract_advisories/cadvisory_16.htm).

**47. COMPLIANCE WITH HIPAA (HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996) AND HI-TECH (HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT OF 2009)**

To the extent the Contractor or its subcontractor(s) create, receive, maintain, or transmit "Protected Health Information" as defined in 45 CFR 160.103 (PHI) on behalf of the State pursuant to their responsibilities under this Contract, the Contractor must and shall require its subcontractors to comply with the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009, as amended (HI-TECH), and execute the HIPAA and HITECH Compliance Certification Form provided by the OPWDD. The successful Bidder must agree to and sign the

OPWDD HIPAA Business Association Agreement. The successful Bidder must notify OPWDD and ITS within twenty-four hours of its knowledge of an actual or suspected breach of security involving an individual's Protected Health Information.

#### **48. DELIVERABLE ACCEPTANCE**

Completed work products and services ("Deliverables") will be delivered to the designated State approver who has been authorized to accept deliverables. Deliverables must meet contract requirements. The New York State approver will accept or reject the Deliverable within fifteen (15) business days of the receipt of the Contractor's notification of completion. If the New York State approver rejects a work product or service, the cause for rejection and all defects to be addressed will be documented by New York State and provided to the Contractor, and the Contractor will correct all identified deficiencies and resubmit the Deliverable for acceptance within five (5) business days. When resubmitted after rejection, the New York State approver will accept or reject the work product or service within seven (7) business days. The number of resubmissions shall be limited to two (2), after which time the issue shall be subject to the Dispute Resolution Section 27 for further determination. To the extent that any Deliverables are or have been approved by the State pursuant to the terms hereof at any stage of the Contractor's performance under the Contract, the Contractor shall be entitled to rely on such approval for purposes of all subsequent stages of the Contractor's performance under the Contract. However, if both parties mutually agree on a deviation from the project schedule, such a deviation from original schedule is permissible within the scope of work and/or due to regulatory changes.

#### **49. CHANGE REQUEST**

At any time during the term of this Contract, the State may make changes, subtractions, or additions in any of the Equipment, Software, Documentation, Services, and/or other Deliverables within the general scope of work set forth in the Contract, consistent with pricing established under the terms of this agreement. All such changes shall be executed by both Parties and shall otherwise be in accordance with the terms and conditions of this Contract. If any such change causes an increase or decrease in pricing, or the time required for the performance of the Contract, an equitable adjustment of the Contract amount and/or time of performance will be made on mutual agreement of the Parties, subject to the approval of the Office of the State Comptroller and any applicable control agency, if required.

#### **50. MEDICAID REQUIREMENTS**

##### **50.1 FEDERAL FALSE CLAIMS ACT**

Federal False Claims Act (31 U.S.C. §§3729-3733) and the New York State False Claims Act (State Finance Law Article XIII §§187-194) – the Contractor is bound by all of the related laws. The law requires that the OPWDD provide its contractors with information about the federal False Claims Act, the New York State False Claims Act, and other federal and State laws that play a role in preventing and detecting fraud, waste, and abuse in federal healthcare programs. This information must include the whistleblower protections that are in these laws. The OPWDD must also provide its contractors with information about the OPWDD's own policies and procedures for detecting and preventing waste, fraud, and abuse. You can find detailed descriptions of these laws, their whistleblower protections, and the OPWDD's policies on the OPWDD website at [www.opwdd.ny.gov](http://www.opwdd.ny.gov). At the home page, select Information for Providers on the left side of the page, then select False Claims Recoveries. You can also visit the New York State Medicaid Inspector General website at [www.omig.ny.gov](http://www.omig.ny.gov) to obtain information about these laws. A paper copy of the detailed descriptions of the laws and of OPWDD policies and procedures related to waste, fraud, and abuse is available from the OPWDD Contract Management Unit, 5th floor, 44 Holland Ave., Albany NY 12229-0001. As a Contractor of the OPWDD, you are required to participate in the reviews and audits described in the OPWDD's policies and to abide by these policies with respect to funding for OPWDD services. You are also required to make the information at the OPWDD website address listed above available to all of your employees and to all of your contractors involved in performing work under your Contract with the OPWDD.

##### **50.2 NON-EXCLUSION REPRESENTATION**

Both the United States Department of Health and Human Services and the Office of the Medicaid Inspector General (OMIG) can exclude persons and organizations from federal and State healthcare programs. If this Contract is funded through the New York State Medicaid program, the following applies.

The Contractor represents that:

1. The United States Secretary of Health and Human Services has not excluded the Contractor from participation in a federal healthcare program (including the Medicaid program) under 42 U.S.C. §§1320a-7 or 1320a-7a or excluded the Contractor from eligibility to provide services under the Social Security Act on a reimbursable basis under 42 U.S.C. §1320c-5.
2. The Secretary of Health and Human Services has not directed the New York State Department of Health or any other New York State government agency to exclude the Contractor from participation in a federal healthcare program (including the Medicaid program) under 42 U.S.C. §§1320a-7(d) or 1320a-7a(a).
3. The New York State Medicaid Inspector General has not excluded the Contractor from participation in the New York Medicaid program under 18 NYCRR Part 515.
4. No federal or State agency has otherwise excluded the Contractor from participation in the New York Medicaid program or excluded the Contractor from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis.

If during the term of this Contract the Contractor is excluded from participation in a federal healthcare program or the New York Medicaid program or is excluded from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis, under the authorities stated above, this Contract shall be immediately terminated.

## **51. PROCUREMENT LOBBYING POLICY AND PROHIBITIONS**

Pursuant to State Finance Law (STF) §§ 139-j and 139-k, this Contract includes and imposes restrictions on certain communications between the procuring Agency and Contractor during the procurement process. During the restricted period, which begins with the earliest notice of intent to solicit offers/bids through final award and approval of the procurement contract by the OPWDD and, if applicable, the Office of the State Comptroller, Contractors are restricted from making contact to other than designated staff, unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Findings of non-responsibility related to Procurement Lobbying can result in rejection of contract award and, in the event of two findings within a four-year period, the Contractor shall be debarred from obtaining governmental Procurement Contracts. Further information regarding Procurement Lobbying requirements can be found on the Office of General Services (OGS) website at <https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx>. The Contractor's completed and signed Attachment 4: Procurement Lobbying Law Certification of Compliance is incorporated into this Contract.

## **52. CONFLICTS OF INTEREST**

- a. The Contractor has provided Attachment 8: Vendor Assurance of No Conflict of Interest or Detrimental Effect, signed by an authorized executive or legal representative, attesting that the Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with, the State of New York.
- b. The Contractor hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's ethical performance of duties required to be performed pursuant to the terms of this Contract. The Contractor shall have a duty to notify the OPWDD immediately of any actual or potential conflicts of interest.
- c. In conjunction with any subcontract under this Contract, the Contractor shall obtain and deliver to the OPWDD, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the OPWDD a signed and

completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

- d. The OPWDD and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. The OPWDD will review the nature of any relationships and reserves the right to terminate this Contract for any reason, or for cause, if, in the judgment of the OPWDD, a real or potential conflict of interest cannot be cured.

### **53. EXECUTIVE ORDER 177 CERTIFICATION**

In accordance with Executive Order 177, the Contractor must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status or other protected status under the New York State Human Rights Law, Article 15 of the Executive Law. The Contractor's completed and signed Attachment 9: Executive Order 177 Anti-Discrimination Certification is incorporated into this Contract.

### **54. SEXUAL HARASSMENT PREVENTION POLICY**

State Finance Law §139-l requires contractors on state procurements to certify that they have a written policy addressing sexual harassment prevention in the workplace and provide annual sexual harassment training to all its employees and that such policy, at a minimum, meets the requirements of State Labor Law §201-g. The Contractor's completed and signed Attachment 10: Sexual Harassment Policy Certification form is incorporated into this Contract.

### **55. NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE**

The State conducts a review of prospective Contractors and subcontractors with anticipated expenditures of \$100,000 or more to provide reasonable assurances that the Contractor is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction contracts and is

designed to provide information to assess a Contractor's responsibility to conduct business with the State based

upon financial and organizational capacity, legal authority, business integrity and past performance history. By signing this Contract, the Contractor agrees to complete the Questionnaire fully and accurately. The Contractor

acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Contractor is responsible and that the State will be relying upon the Contractor's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

The State recommends that each Contractor file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, the Contractor should refer to the VendRep System Instructions and User Support for Vendors available on the Office of the State Comptroller (OSC) website at

<https://www.osc.state.ny.us/vendrep/enroll.htm>. The Contractor must update its Questionnaire within ten (10) business days of such request by the State.

### **56. Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia**

- 56.1 Executive Order No. 16 provides that "all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia." The complete text of Executive Order No. 16 can be found here. No. 16: Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia | Governor Kathy Hochul (ny.gov)

- 56.2 The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.
- 56.3 As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.
- 56.4 The Attachment 11: Certification Under Executive Order No. 16, must be completed and submitted with the executed contract.

**By submitting a Bid/Proposal for this RFP, the Offerer/Contractor agrees to the terms and conditions expressed within this Appendix B.**

## APPENDIX C: INSURANCE REQUIREMENTS

During the term of the Contract, the Contractor shall maintain in force, at its sole cost and expense, policies of insurance as required by this Section. All insurance required by this Section shall be written by companies that have an A.M. Best Company rating of “A-,” Class “VII” or better. In addition, companies writing insurance intended to comply with the requirements of this Section should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. The OPWDD, in its sole discretion, may accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed company’s strong financial rating. If, during the term of a policy, the carrier’s A.M. Best rating falls below “A-,” Class “VII,” the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Acceptance and/or approval by the OPWDD does not, and shall not, be construed to relieve the Contractor of any obligations, responsibilities, or liabilities under this Contract.

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

**A. General Conditions Applicable to Insurance.** All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Vendor are specified in Section B-*Insurance Requirements* below.
2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in writing by OPWDD, all policies of insurance required by this Appendix shall be written on an occurrence basis.
3. **Certificates of Insurance/Notices.** The Vendor shall provide OPWDD with a Certificate or Certificates of Insurance, in the form satisfactory to OPWDD (e.g., an ACORD certificate), with Solicitation response. Certificates shall reference the Solicitation or award number and shall name “The New York State Office of General Services, Procurement Services, Empire State Plaza, Corning Tower, 38th Floor, Albany New York, 12242” as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OPWDD and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Refer to this Solicitation and any Contract resulting from this Solicitation by award number;
- Be signed by an authorized representative of the referenced insurance carriers; and Contain the following language in the Description of Operations / Locations / Vehicles section: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees are included as an additional insured on endorsement CG 20 10 11 85 (or endorsements that provide equivalent coverage, such as the combination of CG 20 10 04 13 (covering ongoing operations) and CG 20 37 04 13 (covering completed operations)), and General liability coverage is provided on the current edition of Commercial General Liability Coverage Form CG 00 01 (or a form that provides equivalent coverage). Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insured.

Only original documents (certificates and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

Except for (i) Data Breach and Privacy/Cyber Liability coverage, (ii) Technology Errors and Omissions, and (iii) Crime insurance coverages, OPWDD generally requires Vendors to submit only certificates of insurance and additional insured endorsements, although OPWDD reserves the right to request other proof of insurance. Vendors are requested to refrain from submitting entire insurance policies, unless specifically requested by OPWDD. If an entire insurance policy is submitted but not requested, OPWDD shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OPWDD does not constitute proof of compliance with the insurance requirements and does not discharge Vendors from submitting the requested insurance documentation.

4. **Forms and Endorsements.** For Data Breach and Privacy/Cyber Liability, Technology Errors and Omissions, and certain Crime Insurance coverages (those containing Cyber theft coverage), Vendor shall provide, a Schedule of Forms and Endorsements with the Solicitation response and, upon request, all Forms and Endorsements, unless otherwise agreed to in writing by OPWDD. The Forms and Endorsements shall provide evidence of compliance with the requirements of this Appendix. Only original documents or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.
5. **Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Vendor's insurance.
6. **Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Appendix at any time during the term of any Contract resulting from this Solicitation shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation or at law or in equity.
7. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OPWDD. Such approval shall not be unreasonably withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments with the deductibles or self-insured retentions. If the Vendor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided at the time of Solicitation response.
8. **Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such subcontractor to procure policies of insurance as required by this Appendix and maintain the same in force during the term of any work performed by that Subcontractor.
9. **Waiver of Subrogation.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Vendor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or subrogation against the People of the State

of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to OPWDD upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

- 10. Additional Insured.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Vendor shall cause to be included in each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insured: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Additional Insured Endorsements shall be provided with Solicitation response and upon request to:

The New York State Office of General Services  
Procurement Services - 22802  
38th Floor, Corning Tower  
Empire State Plaza  
Albany, New York 12242

A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Vendors who are self-insured, Vendor shall be obligated to defend and indemnify the above-named additional insured with respect to Commercial General Liability and Comprehensive Business Automobile Liability, in the same manner that Vendor would have been required to pursuant to this Appendix had Vendor obtained such insurance policies.

As clarification, "The People of the State of New York" means the State of New York and its subsidiary governmental entities. This is the name in which the State, as a governmental entity, enters into contracts, takes title to property, and initiates legal actions. Using the term "People" does not mean that the insurer is insuring all residents of New York State; rather, it means that the State government is being insured.

- 11. Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided with Solicitation response and upon request.
- 12. Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Vendor shall provide OPWDD with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.
- 13. Policy Renewal/Expiration.** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to OPWDD. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Contract resulting from this Solicitation, or proof thereof is not provided to OPWDD, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OPWDD.
- 14. Deadlines for Providing Insurance Documents after Renewal or Upon Request.** During the term of any Contract resulting from this Solicitation, as set forth herein, certain insurance documents must

be provided to the OPWDD Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OPWDD as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days
- For schedules of forms and endorsements and all forms and endorsements: 60 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OPWDD, OPWDD shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

- B. Insurance Requirements:** Vendors and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of this Solicitation, or any Contract resulting from this Solicitation, or as required by law, whichever is greater.

**PLEASE NOTE – FOR LOT 3 CLOUD AND LOT 4 IMPLEMENTATION ONLY**

Depending upon the risk, OPWDD(s) may require the Contractor to provide additional insurance and/or increased insurance coverages. OPWDD(s) must define these requirements in the OPWDD(s) RFQ. Contractors shall not exceed Contract pricing in response to an OPWDD(s) RFQ.

- 1. Commercial General Liability Insurance:** Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from bodily injury, premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a Contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

Minimum Insurance Coverage	
General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$2,000,000
Damage to Rented Premises	\$50,000
Medical Expenses	\$5,000

Aggregate limits shall apply on a per location basis, or as otherwise agreed to in writing by OPWDD. This aggregate limit applies separately to each location at which the insured works.

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in any Contract resulting from this Solicitation;

- Defense and/or indemnification obligations, including obligations assumed under any Contract resulting from this Solicitation;
- Cross liability for additional insureds; and
- Explosion, collapse and underground hazards.

2. **Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile used in connection with performance under any Contract resulting from this Solicitation, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this Solicitation, the Contractor does not need to obtain Comprehensive Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by OPWDD. If, however, during the term of any Contract resulting from this Solicitation, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this Appendix and provide proof of such coverage to OPWDD in accordance with the insurance requirements of any Contract resulting from this Solicitation.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under any Contract resulting from this Solicitation, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under any Contract resulting from this Solicitation, the Contractor must: (i) obtain Comprehensive Business Automobile Liability Insurance as required by this Solicitation or any Contract resulting from this Solicitation, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under any Contract resulting from this Solicitation, on a form provided by OPWDD. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this Appendix and provide proof of such coverage to OPWDD in accordance with the insurance requirements of any Contract resulting from this Solicitation.

3. **Data Breach and Privacy/Cyber Liability:** Contractors are required to maintain during the term of any Contract resulting from this Solicitation and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the OPWDDs' systems due to the actions of the Contractor which results in unauthorized access to the OPWDD(s) or their data. Said insurance shall be maintained in the following limits:

Data Breach and Privacy/Cyber Liability		
Lot		Minimum Insurance Coverage
Lot 1 – Software		\$1,000,000
Lot 2 – Hardware		\$1,000,000
Lot 3 – Cloud *	Low Risk	\$2,000,000
	Moderate Risk	\$5,000,000
	High Risk	\$10,000,000

Data Breach and Privacy/Cyber Liability	
Lot	Minimum Insurance Coverage
Lot 4 - Implementation	\$1,000,000
<p>* See NYS-S14-002 Information Classification Standard or successor available at <a href="http://www.its.ny.gov/tables/technologypolicyindex.htm">http://www.its.ny.gov/tables/technologypolicyindex.htm</a> for additional information relating to risk categories.</p> <p>Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.</p>	

Said insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property, including but not limited to money and securities.

If the policy is written on a claims made basis, Vendor must include with Solicitation response an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

4. **Technology Errors and Omissions:** Contractors are required to maintain during the term of any Contract resulting from this Solicitation and as otherwise required herein, Technology Errors and Omissions Insurance. Said insurance shall be maintained in the following limits:

Technology Errors and Omissions		
Lot		Minimum Insurance Coverage
Lot 1 – Software		\$1,000,000
Lot 2 – Hardware		\$1,000,000
Lot 3 – Cloud *	Low Risk	\$2,000,000
	Moderate Risk	\$5,000,000
	High Risk	\$10,000,000
Lot 4 – Implementation		\$1,000,000
<p>*See NYS-S14-002 Information Classification Standard or successor available at <a href="http://www.its.ny.gov/tables/technologypolicyindex.htm">http://www.its.ny.gov/tables/technologypolicyindex.htm</a> for additional information relating to risk categories.</p> <p>Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.</p>		

Said insurance shall provide coverage for damages arising from computer related services including but not limited to the following:

1. Consulting;
2. Data processing;
3. Programming;
4. System integration;
5. Hardware or software development;
6. Installation;
7. Distribution or maintenance;
8. Systems analysis or design;
9. Training;
10. Staffing or other support services; and
11. Manufactured, distributed, licensed, marketed or sold cloud computing services.

The policy shall include coverage for third party fidelity including cyber theft.

If the policy is written on a claims made basis, Vendor must include with Solicitation response an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period (“tail coverage”) providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

5. **Crime Insurance:** Contractors are required to maintain during the term of any Contract resulting from this Solicitation and as otherwise required herein, Crime Insurance. Said insurance shall be maintained in the following limits:

Crime Insurance	
Lot	Minimum Insurance Coverage
Lot 1 – Software	\$2,000,000

Lot 2 – Hardware		\$2,000,000
Lot 3 – Cloud *	Low Risk	\$2,000,000
	Moderate Risk	\$5,000,000
	High Risk	\$10,000,000
Lot 4 - Implementation		\$2,000,000
<p>*See NYS-S14-002 Information Classification Standard or successor available at <a href="http://www.its.ny.gov/tables/technologypolicyindex.htm">http://www.its.ny.gov/tables/technologypolicyindex.htm</a> for additional information relating to risk categories.</p> <p>Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.</p>		

Crime Insurance on a “loss sustained form” or “loss discovered form” providing coverage for Third Party Fidelity.

In addition to the coverage above:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Vendor’s and Contractor’s insurer as a result of this Solicitation must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Vendor and Contractor as a result of this Solicitation.
- The policy shall include coverage for third party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an OPWDD and their officers, agents, and employees as “Loss Payees” for all Third Party coverage secured. An Endorsement naming as Loss Payees “The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an OPWDD and their officers, agents and employees” shall be provided upon request. A blanket Loss Payee Endorsement evidencing such coverage is also acceptable. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

- 6. Workers’ Compensation Insurance & Disability Benefits Coverage:** Sections 57 and 220 of the New York State Workers’ Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers’ compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Vendor will not be awarded a Contract unless proof of workers’ compensation and disability insurance is provided to OPWDD.** Proof of workers’ compensation and disability benefits coverage, or proof of exemption must be submitted to OPWDD at the time of policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers’ Compensation Board. **An ACORD form is not acceptable proof of New York State workers’ compensation or disability benefits insurance coverage.**

Proof of Compliance with the Workers’ Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or Disability Benefits Insurance*

*Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));

- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OPWDD by the Vendor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OPWDD upon request from the Vendor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Vendor's Group Self-Insurance Administrator.

Proof of Compliance with the Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OPWDD by the Vendor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

## APPENDIX D: HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS Agreement is made by and between New York State Office for People With Developmental Disabilities (OPWDD or Covered Entity), and \_\_\_\_\_ (Business Associate), referred to collectively as “the Parties”.

WHEREAS, Business Associate provides certain services to OPWDD **as described in the attached MOU or Contract** and, in connection with such services, creates, receives, maintains, accesses, uses or discloses on behalf of OPWDD certain individually-identifiable protected health information (PHI) relating to individuals served by OPWDD that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended, including Subpart D of the Health Information Technology for Economic and Clinical Health Act (HITECH) of Title XIII, Division A of the American Recovery and Reinvestment Act of 2009, and the implementing regulations at 45 CFR Parts 160 through 164; and

WHEREAS, by reason of such activities, the Department of Health and Human Services may deem certain services provided by Corning Council for Assistance & Information to the Disabled to constitute those of a “business associate” of OPWDD, as such term is defined in 45 CFR § 160.103; and

WHEREAS, Covered Entity and Business Associate wish to comply in all respects with the requirements of HIPAA and HITECH, including requirements applicable to the relationship between a covered entity and its business associates;

THEREFORE, the Parties agree as follows:

1. Definitions:

a. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

b. Specific definitions:

- i. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the Party to this agreement, shall mean the specific Business Associate listed in the first paragraph of this Agreement.
- ii. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the Party to this agreement, shall mean OPWDD.
- iii. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 through 164.

2. Obligations and Activities of Business Associate

(a) Business Associate agrees to:

- i. not use or further disclose PHI other than as Required by Law or as otherwise permitted or as

required by this Agreement;

- ii. use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement,
- iii. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity pursuant to this Agreement, in accordance with 45 CFR Part 164 and Sections 13401 and 13404 of the HITECH Act;
- iv. mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement;
- v. report to Covered Entity any use or disclosure of the PHI not authorized by this Agreement of which it becomes aware. Further, Business Associate agrees to report to Covered Entity any security incident, including a breach of Unsecured PHI, of which it becomes aware. In the event of such a breach:
  - 1. Business Associate shall promptly notify Covered Entity of the breach when it is discovered. A breach is considered discovered on the first day on which Business Associate knows or should have known of such breach. Such notification shall identify the Individuals, and their contact information, whose Unsecured Protected Health Information has, or is reasonably believed to have been, the subject of the breach. Business Associate shall provide additional information concerning such breach to Covered Entity as requested;
  - 2. Covered Entity or Business Associate, as determined by Covered Entity, shall promptly notify individuals about a breach of their Unsecured Protected Health Information as soon as possible but not later than 60 calendar days after discovery of the Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Notification shall be in a form and format prescribed by Covered Entity and shall meet the requirements of section 13402 of the HITECH Act;
  - 3. to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- vi. to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- vii. to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524;

- vii. to make any amendments to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity;
  - viii. to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule;
  - ix. to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528;
  - x. to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section (2)(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (b) Business Associate hereby acknowledges and agrees that Covered Entity has notified Business Associate that it is required to comply with the confidentiality, disclosure and re-disclosure requirements of 10 NYCRR part 63 and to the provisions of Mental Hygiene Law Section 33.13 and 33.16 to the extent such requirements may be applicable.
- (c) Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule and the Security Rule to the same extent that Covered Entity is responsible for compliance with such Rules. Business Associate acknowledges that it is subject to civil and criminal penalties for violations of such provisions in the same manner as if Covered Entity violated such provisions.

### 3. Permitted Uses and Disclosures by Business Associate

- (a) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information:
- i. to perform functions, activities, or services for, or on behalf of Covered Entity pursuant to the Contract provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity;
  - ii. for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate;
  - iii. for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate or any instances of which it is aware in which the confidentiality of the information has been breached;

- iv. to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B). Data aggregation includes the combining of protected information created or received by a business associate through its activities under this contract with other information gained from other sources;
- v. to report violations of law to appropriate Federal and State authorities, consistent with New York State Mental Hygiene Law and 45 CFR 164.502(j)(1).

#### 4. Obligations of Covered Entity

(a) Covered Entity shall notify Business Associate of any:

- i. limitation(s) in the Notice of Privacy Practices Covered Entity produces in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information;
- ii. changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's permitted or required uses or disclosures of Protected Health Information;
- iii. restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

#### 5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. Covered Entity may permit Business Associate to use or disclose Protected Health Information for data aggregation or management and administrative activities of business Associate, if the Agreement includes provisions for same.

#### 6. Remedies in Event of Breach

Business Associate hereby recognizes that irreparable harm may result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections 2 or 3 above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of such Sections. Furthermore, in the event of breach of Sections 2 or 3 by Contractor, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

#### 7. Consideration

Business Associate acknowledges that the covenants and assurances it has made in the Agreement shall be

relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

#### 8. Term and Termination

- (a) **Term.** The Term of this Agreement shall be effective as of the Effective Date of this agreement and shall not terminate until all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of the Covered Entity is destroyed or returned to the Covered Entity or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information in accordance with the termination provisions in this section.
- (b) **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide Business Associate with an opportunity to cure the breach and then terminate this Agreement and any other agreement between Covered Entity and Business Associate if Business Associate does not cure the breach within time period specified by the Covered Entity.
- (c) **Effect of Termination.**
  - i. Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  - ii. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protection of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

#### 9. Miscellaneous.

- (a) **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- (b) **Agreement.** The Parties agree to take such action as necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191, and any other applicable law.
- (c) **Survival.** The respective rights and obligations of Business Associate under Section 2 and 3 of this Agreement shall survive the termination of this Agreement, as shall the rights of access and inspection of Covered Entity.

- (d) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

10. Material Breach.

The parties acknowledge that in the event Covered Entity learns of a pattern or activity or practice of the Business Associate that constitutes violation of a material term of this Agreement, then the parties promptly shall take reasonable steps to cure the violation. If such steps are, in the judgment of the Covered Entity, unsuccessful, ineffective or not feasible, then Covered Entity may terminate this Agreement upon written notice to the Business Associate, if feasible, and if not feasible, shall report the violation to the Secretary of HHS. Written notice may be transacted by certified or registered mail return receipt requested, facsimile transmission, personal delivery, expedited delivery service or via e-mail.

11. Law Governing Conflicts.

This Agreement shall be enforced and construed in accordance with the laws of the State of New York. Jurisdiction of any litigation with respect to this Agreement, shall be in New York, with venue in a court of competent jurisdiction in Albany County.

**By submission of a proposal responding to this RFP, Offerer understands and agrees to the terms and conditions of this Appendix.**

### Attachment 1: Attestation Checklist (Administrative Proposal)

This attachment must be signed by an individual authorized to contractually bind the successful Offerer. Offerers must utilize this attachment to acknowledge the proposal requirements and attest that the Offerer meets these requirements and specifications. By submission of the originally signed hard copy of this Attachment 1, Offerer understands and agrees that by providing an electronic signature on all other attachments, with exception to Attachment 2: Cost Proposal, which also must be originally signed, Offerer agrees to the terms and conditions of the RFP and all required attachments.

Offerer Information	
Provide information for the Offerer's Primary Contact with regard to the proposal submitted.	
Entity Legal Name:	
Primary Contact Name:	
Street Address:	
City, State, ZIP Code:	
Telephone Number: (    )    -	
Fax Number: (    )    -	
Primary Contact Email Address:	
Taxpayer Employer Identification Number (EIN):	
NYS Vendor Identification Number (see RFP Section 3.1.15):	
Person Authorized to Receive Notices	
See Clause 18, Appendix A Supplement-1 of this RFP.	
Authorized Contact Name:	
Street Address:	
City, State, ZIP Code:	
Telephone Number: (    )    -	

Fax Number: (    )    -

Authorized Contact Email Address:

### ADMINISTRATIVE PROPOSAL REQUIREMENTS

RFP sections are referenced for the purpose of guiding Offerers and are not intended to be exclusive of other non-referenced parts.

\*Offerers must check “Yes” to indicate their understanding of, agreement with, and or completion of, each requirement; Offerers must include an explanation for “No” responses in the last row of this Checklist.

REQUIREMENT	RESPONSE*
The Offerer attests the following minimum qualifications are met by the Offerer or its subcontractor and evidence is provided as required in the Technical Proposal:	
1.3.1. Have at least three (3) years of experience conducting program and policy analysis of public sector services in the fields of social services, long-term care services and/or the developmental disabilities field. As described further in section 3.2.1 of the RFP, strong preference will be provided to an Offerer with program and policy analysis involving services for individuals with intellectual and/or developmental disabilities.	<input type="checkbox"/> Yes <input type="checkbox"/> No
1.3.2. The Offerer must also be able to demonstrate that they prepared at least one professional report, analysis, or evaluation of publicly funded services within a managed care delivery system as follows:	
1.3.2.1. this may include a single three-year engagement, or multiple engagements with a cumulative period of at least 36-months;	<input type="checkbox"/> Yes <input type="checkbox"/> No
1.3.2.2. attests to a minimum of three (3) years of experience as required in section 3.2.1 of this RFP;	<input type="checkbox"/> Yes <input type="checkbox"/> No
1.3.2.3. affirms the Offerer is independent of any entity that might benefit directly from the development of specialized individual Plans for Individuals with I/DD or other managed care models that may emerge in NYS and include I/DD services within the benefit package;	<input type="checkbox"/> Yes <input type="checkbox"/> No
1.3.2.4. affirms the Offerer will have the ability to become HIPAA compliant and will sign a Business Associate Agreement prior to the execution of the Contract resulting from this RFP, by entering into a data sharing or business associates’ agreement(s) deemed necessary by the State as provided in Appendix D: OPWDD HIPAA BUSINESS ASSOCIATE AGREEMENT of this RFP; and	<input type="checkbox"/> Yes <input type="checkbox"/> No

<p>1.3.2.5. affirms the Offerer has provided the Attachment 8: Vendor Assurance of No Conflict of Interest or Detrimental Effect, signed by an authorized executive or legal representative, attesting that the Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with, the State of New York.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>1.3.3. Ownership of Work Product</p> <p>Offerer understands and accepts all materials produced, created, improved, maintained, or conceived by the Contractor for the OPWDD in the fulfillment of its obligations under the contract resulting from this, including but not limited to any software, website creation and development, documentation, products, materials, advertising for television, radio, print, internet, or other media, and deliverables which result from services rendered by the Contractor to the OPWDD shall be turned over to the OPWDD within ninety (90) days of the expiration of the Contract, or within thirty (30) days of early termination of the Contract, at no additional cost to the OPWDD. OPWDD shall own all rights, title, and interest in said material.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>1.6. The offerer understands there is one allowable contact for communications related to the submission of written proposals, written questions, pre-bid questions, and debriefings per section 1.6 of the RFP.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>1.7.1. Questions from Offerers regarding this RFP must be received by OPWDD in accordance with the Deadline for Submission of Questions included in the Calendar of Events, Section 1.4 of this RFP and must be submitted using the <b>Attachment 14: OPWDD Questions Submittal Form</b> available at the link provided on page 136 of this RFP.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>The Proposer must complete and submit this <b>Attachment 1: Attestation Checklist (Administrative Proposal)</b>, as a mandatory requirement of the Administrative Proposal Requirements, which must be signed by an individual who is authorized to contractually bind the successful Offerer.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>3.1.1. Offerer provided a list of Proposal Redactions - Freedom of Information Law, on a USB Memory Stick as required in 4.2.3.1. of this RFP, clearly and specifically identifying any portion of the proposal that the Offerer believes constitutes proprietary information entitled to confidential handling as an exception to the Freedom of Information Law.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>3.1.2. Offerer must complete this Attachment 1: Attestation Checklist (Administrative Proposal), which consist of required attestations, agreements, warranties, certifications and documents. Included with this Attachment 1 is a proposal document checklist, provided to assist Offerers in ensuring the required documents are included in their submission.</p>	
<p>Warrant the Offerer is authorized to do business in the State of New York.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Warrant the Offerer is willing and able to comply with New York laws with respect to foreign (non-New York) corporations.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Warrant the Offerer is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Warrant the Offerer will not delegate or subcontract its responsibilities under an agreement without the written permission of the OPWDD.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Acknowledge the costs set forth in the Cost Proposal are firm costs that are binding and irrevocable for a period of not less than 270 days from the date of proposal submission.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Warrant the Offerer acknowledges and agrees to the terms and conditions of the OPWDD Standard Contract Terms, provided in Appendix B: Contract Boilerplate of this RFP, if selected for award of a contract resulting from the MC ASSESSMENT RFP procurement process.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Acknowledge the Bidder understands and accepts the provisions of this RFP and all attachments thereto including Attachment D: HIPAA Business Associate Agreement, which incorporates a Data Use Agreement as defined in Appendix B, section 25.b. of this RFP; and agrees to comply with all applicable Federal, State and Local laws. The Offerer acknowledges and agrees to the terms and conditions of the OPWDD Standard Contract Terms, provided in Appendix B of this RFP, if selected for award of a contract resulting from this RFP.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Explicitly set forth any questions or anticipated difficulty with any such contract provisions. OPWDD reserves the right to reject any or all issues raised by a Bidder and require full acceptance of the terms of this RFP.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Acknowledge the Offerer has read the RFP, understands it, and agrees to be bound by all of the conditions therein, inclusive of all Appendixes, Attachments and Exhibits. Acknowledge the Offerer has reviewed and understands each addendum and accepts and is willing to enter into a Contract in accordance with the terms of the RFP inclusive of all Appendixes, Attachments and if the Offerer is selected for contract award, including the Questions and Answers and any Amendments or Addendums to this RFP (section 1.8.3).	<input type="checkbox"/> Yes <input type="checkbox"/> No
Warrant all information provided by the Offerer in connection with submission of a proposal is true and accurate.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>3.1.5. Confirm that Offerer and where applicable, affiliates and subcontractors, have completed or updated Vendor Responsibility Questionnaire online in the Office of the State Comptroller's VendRep System; or has printed, completed and scanned, the paper copy also provided at:</p> <p><a href="#">State Vendors   Office of the New York State Comptroller</a></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

3.1.13. Offerer is willing and able to file a properly completed Form ST-220-CA with the OPWDD and a properly completed Form ST-220-TD with the Department of Taxation and Finance before the Contract may take effect in accordance with Section 3.1.13. of this RFP. For forms and more information, visit: <a href="https://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/section_5a.htm">https://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/section_5a.htm</a>	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1. Offerer understands all proposals must be submitted and received by the proposal submission date and time specified in Section 1.4 of this RFP. Proposals received after the proposal submission deadline shall be rejected. Faxed proposals and electronic submissions will not be accepted.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Offerers must utilize this form to acknowledge the proposal requirements and attest that the Offerer meets these requirements and specification and this form is signed by an individual authorized to contractually bind the successful Offerer.	<input type="checkbox"/> Yes <input type="checkbox"/> No

ADMINISTRATIVE PROPSAL DOCUMENT CHECKLIST		
The NYS Procurement forms and documents, listed here with links to external websites or attached to this RFP, must be completed and signed as indicated, and submitted as part of the Administrative Proposal:		
DOCUMENT	RFP §	INCLUDED
Attachment 1: Attestation Checklist (Administrative Proposal)	3.1	<input type="checkbox"/>
Attachment 3: Non-Collusive Bidding Certification (Clause 7, Appendix A of this RFP)	3.1.4.3., Appendix A.7	<input type="checkbox"/>
Attachment 4: Procurement Lobbying Law Certification of Compliance	6.2, Appendix A.24	<input type="checkbox"/>
Attachment 5: Listing of Proposed Subcontractors	Appendix B.39	<input type="checkbox"/>
Attachment 6: Encouraging Use of New York State Businesses in Contract Performance	3.1.8.	<input type="checkbox"/>
Attachment 8: Vendor Assurance of No Conflict of Interest or Detrimental Effect	1.3.2.5., Appendix B.52	<input type="checkbox"/>
Attachment 10: Sexual Harassment Policy Certification	3.1.10	<input type="checkbox"/>
Attachment 9: Executive Order 177 Anti-Discrimination Certification	3.1.11.	<input type="checkbox"/>
Attachment 11: Certification Under Executive Order N0 16	3.1.14.	<input type="checkbox"/>

<b>Required forms included in APPENDIX A: Supplement – 2 that must also be submitted with the Administrative Proposal:</b>	
Form MWBE 100 Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Program (MWBE-EEO) Policy Statement	<input type="checkbox"/> Yes <input type="checkbox"/> No
Form MWBE 101 Staffing Plan (Appendix A: Supplement)	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Required forms included in APPENDIX A SUPPLEMENT – 3: SDVOB Requirements and Procedures must also be submitted with the Administrative Proposal</b>	
<b>SDVOB UTILIZATION PLAN</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>ADDITIONAL SHEET</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No

<b>3.1 Offerers must indicate their understanding of an agreement to provide the following certifications and reports upon award:</b>	
<b>3.1.12. Planned/Annual Employment Reports, (Attachment 7: Consultant Disclosure Reporting Requirements)</b>  State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term State Consultant Services Form B, Contractor's Annual Employment Report	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>3.1.13. Contractor Certification Tax Form ST-220-TD and Contractor Certification to Covered Agency Form, ST-220-CA (See Section 10.14 Tax Provision for additional information. Fillable forms can be found at:</b>  <a href="http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf">http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf</a> <a href="https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf">https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf</a>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Offerers selected for Award, prior to the start of work, must provide proof of Contractor Insurance Requirements per section 6.3 of this RFP:  Commercial General Liability Commercial Auto Liability Professional Liability Crime Umbrella and Excess Liability	<input type="checkbox"/> Yes <input type="checkbox"/> No
Workers' Compensation Documentation (Appendix C)	<input type="checkbox"/> Yes <input type="checkbox"/> No

<p>Form C-105.2 – Certificate of Workers’ Compensation Insurance issued by private insurance carrier (or Form U-26.3 issued by the State Insurance Fund); or</p> <p>Form SI-12 – Certificate of Workers’ Compensation Self-Insurance (or Form GSI-105.2 Certificate of Participation in Workers’ Compensation Group Self-Insurance); or</p> <p>Form CE- Workers’200 – Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.</p>	
<p>Disability Documentation (Appendix C)</p> <p>Form DB-120.1 – Certificate of Disability Benefits Insurance; or</p> <p>Form DB-155 – Certificate of Disability Benefits Self-Insurance; or</p> <p>Form CE-200 – Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

TECHNICAL PROPOSAL REQUIREMENTS	
Confirm there are no dollar unit or costs included in the Technical Proposal document.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>3.2.1 Offerer Organization</p> <p>Briefly describe your organization’s mission and services;</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.2.1.2. Describe in detail your organization’s relevant experience in providing program and policy analysis of public section services in the fields of social services, long-term care services and/or developmental disabilities, and experience in implementing activities similar to the scope described in Section 2 of this RFP. Describe special techniques, skills and/or abilities the organization will employ including:	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.2.1.2.1. Types of evaluation services and analyses provided, and the length of time these services have been provided	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>3.2.1.2.2. The name, title and contact information for references for a minimum of three most recent related projects. Offerers may submit up to five references to ensure a minimum of three respond. Offerers must provide reference information on Attachment 12: Reference Form of this RFP.</p> <p>- References, staff and or company, will be used to verify submitted information and support the evaluation process.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.2.1.2.3. Offerers must include samples of analyses and/or associated reports;	<input type="checkbox"/> Yes <input type="checkbox"/> No

3.2.1.2.4. The qualifications of the staff that would be assigned to conduct the study, analysis and training and estimated share of time each would allocate to this project. The Offerer must include the resumes of assigned staff.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3.2.1.2.5. For all subcontractors that it intends to use in fulfilling the requirements of the study, the role and relevant experience of the subcontractor(s) should be clearly defined and described.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3.2.2. Technical Proposal Narrative	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>3.2.2.1. Offerer must provide a summary of the proposed project.</p> <p>3.2.2.2. Work Plan</p> <p>3.2.2.3. Deliverables</p> <p>3.2.2.3.1. This must include goals, objectives and desired outcomes with a timeline of corresponding deliverables, tasks/activities, performance measures, milestones and timelines. The Project Summary Narrative must include the deliverables associated with the issues to be addressed as described in Sections 2.3 of this RFP. Offerers must include:</p> <p>3.2.2.3.2. A detailed timeline showing each step in the study process and the dates for each deliverable;</p> <p>3.2.2.3.3. A proposed outline of deliverables that your organization would produce;</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>3.2.3. Milestones and Outcomes Measurements</p> <p>Describe the quantitative milestones and outcome measures that you propose to demonstrate the accomplishment of the project deliverables. Preferred proposals will describe methods to quantify outcomes to be achieved.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3.2.4. Diversity Practices Questionnaire completed	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>TECHNICAL PROPSAL DOCUMENT CHECKLIST</b>		
<b>DOCUMENT</b>	<b>RFP §</b>	<b>INCLUDED</b>
Offerer organization description, Experience, Samples of analyses/reports, staff qualifications, subcontractor roles	3.2.1	
Technical Proposal Narrative: Summary, Work Plan, Deliverables	3.2.2.	
Milestones and Outcomes Measurements	3.2.3.	

Attachment 12: Reference Forms	3.2.1.2.2.	<input type="checkbox"/>
Attachment 13: Diversity Practices Questionnaire	3.2.4.	<input type="checkbox"/>

COST PROPOSAL REQUIREMENTS		
An official authorized to contractually bind the prospective Offerer must sign the Attachment 2: Cost Proposal		<input type="checkbox"/> Yes <input type="checkbox"/> No
Proposals with a rate format different from the format provided in ATTACHMENT 2: Cost Proposal Form will be considered non-responsive and will be disqualified.		<input type="checkbox"/> Yes <input type="checkbox"/> No
COST PROPOSAL DOCUMENT CHECKLIST		
DOCUMENT	RFP §	INCLUDED
Attachment 2: Cost Proposal Form		<input type="checkbox"/>

INSTRUCTIONS FOR PROPOSAL SUBMISSION	
All proposals must be submitted and received by the proposal submission date and time specified in section 1. 4 of this RFP. Proposals received after the proposal submission deadline shall be rejected.	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2. Packaging of Proposal	
4.2.1. Offerers must submit a complete proposal as outlined in this section 4 of this RFP. A proposal that does not comply with these requirements may be deemed non-responsive.	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2.2. Proposals must be submitted on USB Memory Sticks containing PDF files for each one of the proposal sections described in section 3 of this RFP	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2.3. Three separately sealed envelopes containing the following elements, must be submitted and labeled as follows: 4.2.3.1. Administrative Proposal / Offerer Name / MC Assessment RFP - 2 USB Memory Sticks (Admin/Offerer/MC Assessment)	<input type="checkbox"/> Yes <input type="checkbox"/> No

<ul style="list-style-type: none"> <li>- 2 Hardcopies of Attachment 1: Attestation Checklist (Administrative Proposal) with original signature</li> <li>- 1 USB Memory Stick containing proposal redactions as described in section 3.1.1. of this RFP</li> </ul> <p>4.2.3.2. Technical Proposal / Offerer Name/ MC Assessment RFP</p> <ul style="list-style-type: none"> <li>- 2 USB Memory Sticks (Tech/Offerer/MC Assessment)</li> </ul> <p>4.2.3.3. Cost Proposal / Offerer Name/MC Assessment RFP</p> <ul style="list-style-type: none"> <li>- 2 USB Memory Sticks (Cost/Offerer/MC Assessment)</li> <li>- 3 Hardcopies with original signature</li> </ul>	
<p>4.2.4. All three separately sealed envelopes may all be combined into one mailing package. It must be clearly indicated on the outside of the mailing package that a proposal is enclosed. The proposal response must include the Offerer's street address. Proposals with a post office box must include a street address. Complete proposals must have a label on the outside of the package that states the following:</p> <p style="text-align: center;"><b>PROPOSAL ENCLOSED</b> (Bold, Large Print, All capital letters)</p> <p>Title of RFP: MC ASSESSMENT</p> <p>Offerer's Name and Address: _____</p> <p>Proposal Submission Date: _____</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>2.4.4 Offerers should request a receipt containing the time and date received and the signature of the receiver for all hand-deliveries and ask that this information also be written on the package(s).</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>By my signature on this Attachment 1, I certify to the statements made above and that I am authorized to bind the Offerer contractually. Furthermore, I certify that all information provided in connection with its proposal is true and accurate.</b></p>	
<div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 10px;"></div> <p><b>Typed or Printed Name Authorized Representative of the Offerer</b></p> <div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 10px;"></div> <p><b>Title/Position of Authorized Representative of the Offerers</b></p> <div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 10px;"></div> <div style="text-align: right; margin-right: 50px;">/</div>	



Signature of Authorized Representative of the Offerer

Date

**Offerer Information**

Provide information for the Offerer's Primary Contact with regard to the proposal submitted.

Entity Legal Name:

Primary Contact Name:

Street Address:

City, State, ZIP Code:

Telephone Number: (    )    -

Fax Number: (    )    -

Primary Contact Email Address:

Taxpayer Employer Identification Number (EIN):

NYS Vendor Identification Number, if enrolled (see RFP Section 3.1.14):

**Person Authorized to Receive Notices**

See RFP Appendix A Supplement-1, Clause 18.

Authorized Contact Name:

Street Address:

City, State, ZIP Code:

Telephone Number: (    )    -

Fax Number: (    )    -

Authorized Contact Email Address:



## Attachment 2: Cost Proposal

### Managed Care Assessment RFP

OFFERER SFS PAYEE NAME: \_\_\_\_\_

NYS SUPPLIER ID: \_\_\_\_\_ FEIN: \_\_\_\_\_

Authorized Signatory: \_\_\_\_\_ Date \_\_\_\_\_

Print Name: \_\_\_\_\_ Title \_\_\_\_\_

		Reporting Period Associated Cost:						
#	DELIVERABLE/OUTCOME	3 Month	6 Month	9 Month	12 Month	15 Month	18 Month	Total
1								
2								
3								
Subtotal								
TOTAL								

Per section 3.3 of the RFA:

- ❖ Offerers must submit a completed and signed Attachment 2: Cost Proposal.
- ❖ All costs must be related to the deliverables described in the Offerer's Proposal as required in Section 3.2 of this RFP.
- ❖ All costs must be rounded to the nearest hundredths (2 decimal places).

Offerer may add lines as needed. Offerer must consider personnel, support staff, overhead, travel and all other cost related to the provision of services as detailed in Section 2 of this RFP's Scope of Work.

In order for OPWDD to advance the balance remaining on this contract prior to March 31, 2024 and unless otherwise notified, the Contractor must submit the final claim for payment of the balance remaining on the contract no later than February 15th, 2024. (Per section 3.1.16.2. of the RFP)

By signing this Cost Proposal, Offerer acknowledges the costs set forth herein are firm costs that are binding and irrevocable for a period of not less than 270 days from the date of proposal submission (per 2.7.9 of this RFP).

## ATTACHMENTS

The following attachments can be digitally signed and must be submitted on the USB memory sticks included with the Administrative Proposal as required in section 4.2.3.1. of this RFP. S

**Attachment 3: Non-Collusive Bidding Certification (Clause 7, Appendix A of this RFP)**  
[attachment-3-noncollusive-bidding-certification.pdf \(ny.gov\)](#)

**Attachment 4: Procurement Lobbying Law Certification of Compliance**  
[attachment-4-procurement-lobbying-law-certification-of-compliance.pdf \(ny.gov\)](#)

**Attachment 5: Listing of Proposed Subcontractors**  
[Attachment 5: Listing of Subcontractors \(ny.gov\)](#)

**Attachment 6: Encouraging Use of New York State Businesses in Contract Performance**  
[Attachment 6 Encouraging Use Of NY Bus](#)

**Attachment 8: Vendor Assurance of No Conflict of Interest or Detrimental Effect**  
[Attacnebt 8 Offerer Assurance of No Conflict of Interest \(ny.gov\)](#)

**Attachment 9: Executive Order 177 Anti-Discrimination Certification**  
[Attachment 9 Executive Order 177 Antidiscrimination \(ny.gov\)](#)

**Attachment 10: Sexual Harassment Policy Certification**  
[Attachment 10 Sexual Harassment Policy Certification \(ny.gov\)](#)

**Attachment 11: Certification Under Executive Order N0 16**  
[Attachment 11 Executive Order 16 \(ny.gov\)](#)

The following forms must be submitted with the Technical Proposal as required in section 4.2.3.2. of the RFP.

**Attachment 12: Reference Forms**  
[Attachment 12 Reference Forms \(ny.gov\)](#)

**Attachment 13: Diversity Practices Questionnaire**  
[Attachment 13: Diversity Practices Questionnaire \(ny.gov\)](#)

Upon notification of selection, the tentative awardee must submit Form A in accordance with section 3.1.12.1 of this RFP.

**Attachment 7: Consultant Disclosure Reporting Requirements**  
[attachment-7-consultant-disclosure-reporting-requirements.pdf \(ny.gov\)](#)

This attachment must be used with the email submission of questions per section 1.7.1.2. of this RFP.

**Attachment 14: OPWDD Question Submittal Form**  
[\\*Attachment 14 Question Submission Form \(ny.gov\)](#)

## Exhibits

### Exhibit 1: The OPWDD HCBS Waiver

<https://opwdd.ny.gov/system/files/documents/2021/06/cms-approved-7-1-21-amendment.pdf>

### Exhibit 2: OPWDD's 5 DDROs

[~ 5 DDRO 1-23-2020 \(ny.gov\)](#)

### Exhibit 3: New York Capitated Financial Alignment Model Demonstrations

<https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/New-York>

### Exhibit 4: Managed Care Transition for Individuals with I/DD

[https://health.ny.gov/health\\_care/medicaid/program/medicaid\\_health\\_homes/idd/draft\\_mco\\_qual\\_doc.htm](https://health.ny.gov/health_care/medicaid/program/medicaid_health_homes/idd/draft_mco_qual_doc.htm)

### Exhibit 5: NYS Managed Care

[Medicaid and Managed Care \(ny.gov\)](#)

[Dual Eligible New Yorkers \(ny.gov\)](#)